



TUPELO REGULAR CITY COUNCIL MEETING

MAY 03, 2022 AT 6:00 PM
COUNCIL CHAMBERS | CITY HALL

AGENDA

INVOCATION: COUNCIL MEMBER NETTIE DAVIS

PLEDGE OF ALLEGIANCE: COUNCIL MEMBER ROSIE JONES

CALL TO ORDER: COUNCIL PRESIDENT BUDDY PALMER

CONFIRMATION OR AMENDMENT TO THE AGENDA AND AGENDA ORDER

PROCLAMATIONS, RECOGNITIONS AND REPORTS AGENDA

PROCLAMATIONS

RECOGNITION GIRL/BOY SCOUTS

EMPLOYEE RECOGNITION

PUBLIC RECOGNITION

MAYOR'S REMARKS

(CLOSE REGULAR MEETING OPEN PUBLIC AGENDA)

PUBLIC AGENDA

PUBLIC HEARINGS

1. IN THE MATTER OF PUBLIC HEARING FOR LOT MOWING TN

APPEALS

CITIZEN HEARING

(CLOSE PUBLIC AGENDA AND OPEN REGULAR SESSION)

ACTION AGENDA

ROUTINE AGENDA

- 2.** IN THE MATTER OF MINUTES OF APRIL 19, 2022 COUNCIL MEETING
- 3.** IN THE MATTER OF BILL PAY **KH**
- 4.** IN THE MATTER OF ADVERTISING AND PROMOTIONAL ITEMS **KH**
- 5.** IN THE MATTER OF THE 2023 BUDGET CALENDAR **KH**
- 6.** IN THE MATTER OF RATIFICATION OF LEASE AGREEMENT BETWEEN CITY OF TUPELO AND HTG PROPERTY HOLDINGS, LLC. **BL**
- 7.** IN THE MATTER OF OPTING OUT OF ALLOWING THE CULTIVATION, PROCESSING, SALE AND/OR DISTRIBUTION OF MEDICAL CANNABIS AND CANNABIS PRODUCTS **TB**
- 8.** IN THE MATTER OF LOT MOWING **TN**
- 9.** IN THE MATTER OF RESOLUTION OF THE TUPELO CITY COUNCIL REQUESTING THREE RIVERS SWMA AMEND ITS CURRENT SOLID WASTE MANAGEMENT PLAN FOR A PROPOSED EXPANSION OF THE WONDURA CLASS II RUBBISH LANDFILL. **SR**
- 10.** IN THE MATTER OF RESOLUTION REGARDING THE EMERGENCY ROAD & BRIDGE REPAIR FUND PROGRAM **DRB**
- 11.** IN THE MATTER OF NMNU REQUEST FOR DECLARATION OF SURPLUS NMNU VEHICLES FOR AUCTION **JQ**
- 12.** IN THE MATTER OF BID APPROVAL COURT ST DOWNTOWN PARKING LOT IMPROVMENTS 2022-012PW **CW**
- 13.** IN THE MATTER OF BID APPROVAL LOCAL STREET MAINTENANCE MILL AND OVERLAY PROGRAM – 2022 ANNUAL BID 2022-013PW **CW**
- 14.** IN THE MATTER OF APPROVAL OF CONTRACT FOR THE AQUATIC CENTER FOR MEMBERSHIP MANAGEMENT SOFTWARE **AF**
- 15.** IN THE MATTER OF SURPLUS VEHICLE FROM PARK AND RECREATION DEPARTMENT **AF**
- 16.** IN THE MATTER OF REJECTION OF BID # 2022-016WL AND BID # 2022-017WL **JT**

(CLOSE REGULAR SESSION)

STUDY AGENDA

EXECUTIVE SESSION

ADJOURNMENT



AGENDA REQUEST

TO: Mayor and City Council

FROM: TANNER NEWMAN, DIRECTOR OF DDS

DATE MAY 3, 2022

SUBJECT: IN THE MATTER OF PUBLIC HEARING FOR LOT MOWING TN

Request:

PLEASE REVIEW AND APPROVE

Preliminary Lot Mowing Report for 5/3/2022

Item # 1.

	Violation Ref	Parcel	Location	Owner	Owner Address	Owner City State Zip	Inspector
1.	40364	077M3605701	1100 CHAPMAN DR	DAVIDSON STEPHANIE	4360 SOUTHERN AVE SE	WASHINGTON, DC 20019	
2.	40365	077M3605900	1104 CHAPMAN DR	MALDONADO JOSE & JESSICA CRUZ	1105 LAWNSDALE STREET	TUPELO, MS 38801	SB
3.	40366	089F3010601	523 N CHURCH ST	CABRAL SENOVIA	2512 PATTERSON DR	TUPELO, MS 338804	SB
4.	40367	089F3010501	527 N CHURCH ST	CABRAL SENOVIA	2512 PATTERSON DR	TUPELO, MS 338804	SB
5.	40368	089F3012500	571 N CHURCH ST	HICKS ARMENTRA HAYES	8239 SOUTH CARPENTER ST	CHICAGO, IL 60620	SB
6.	40369	089F3016100	572 N CHURCH ST	AGNEW FRANK	201 W DOZIER ST	TUPELO, MS 38804	SB
7.	40370	089F3013000	605 N CHURCH ST UNIT A & B	NE MS HABITAT FOR HUMANITY INC	P O BOX 7321	TUPELO, MS 38802	SB
8.	40371	089F3013600	632 N CHURCH ST	CARRUTH NELLIE	632 N CHURCH	TUPELO, MS 38804	SB
9.	40374	089F3013200	N CHURCH ST	MAYHORN MICHAEL U	3612-B GRACE LN	TUPELO, MS 38804	SB
10	40377	089F3010301	704 N MADISON ST	FOSTER ROBERT M & STEPHANIE G	704 N MADISON	TUPELO, MS 38804	SB
11	40379	089F3013300	431 TOLBERT ST	GALE CONSTRUCTION LLC	124 DRIVE 204	GUNTOWN, MS 38849	SB

Preliminary Lot Mowing Report for 5/3/2022

Item # 1.

	Violation Ref	Parcel	Location	Owner	Owner Address	Owner City State Zip	Inspector
12	40382	077F2617900	709 LAR-ELI-DO DR	PAYNE THOMAS JR	113 WAYSIDE	TUPELO, MS 38804	JLS
13	40383	077J3506600	300 BATTLEFIELD DR	GENE TAYLOR CONSTRUCTION CO INC	2477 AMELIA LANE	TUPELO, MS 38801	JLS
14	40384	077J3508400	2033 BRIARFIELD DR	GENE TAYLOR CONSTRUCTION CO INC	2477 AMELIA LANE	TUPELO, MS 38801	JLS
15	40385	077J3508100	2069 BRIARFIELD DR	GENE TAYLOR CONSTRUCTION CO INC	2477 AMELIA LANE	TUPELO, MS 38801	JLS
16	40386	077J3507500	301 SAGEFIELD DR	GENE TAYLOR CONSTRUCTION CO INC	2477 AMELIA LANE	TUPELO, MS 38801	JLS
17	40387	089F3008900	420 TOLBERT ST	PROVIDENTIAL PROPERTIES, LLC	483 AIR PORT RD	NATCHEZ, MS 39120	SB
18	40388	089F3009000	422 TOLBERT ST	SEARCY TAYLOR ETAL	15310 HAMILTON ST.	GULFPORT, MS 39503	SB
19	40389	089F3009100	424 TOLBERT ST	J JAY PROPERTY	484 FURRS RD	TUPELO, MS 38801	SB
20	40390	101B0219500	2607 BRYAN ST	SHARP JULIA PRENEICE LOWER	205 DOE RUN RD	TUPELO, MS 38801	RS
21	40391	089F3006000	520 WALKER ST	GARDNER WILLIAM	206 E REA ST	TUPELO, MS 38804	SB
22	40392	101B0219600	2609 BRYAN ST UNIT A & B	POUNDERS ROY MITCHELL	356 CR 7000	BOONEVILLE, MS 38829	RS
23	40393	089F3005300	525 W BARNES ST	HEARTLAND PROPERTIES LLC	1336 PALMETTO	TUPELO, MS 38801	SB

Preliminary Lot Mowing Report for 5/3/2022

Item # 1.

	Violation Ref	Parcel	Location	Owner	Owner Address	Owner City State Zip	Inspector
24	40394	101B0221100	2400 CRESTWOOD CIR	KEY CHARLENE G	2400 CRESTWOOD CIRC	TUPELO, MS 38801	RS
25	40395	089F3005700	810 N MADISON ST	EZELL LEKESHA SHUNTAE	810 NORTH MADISON	TUPELO, MS 38804	SB
26	40397	101B0224700	2317 ENGLEWOOD DR	JOHNSON OLLIE M	2317 ENGLEWOOD DR	TUPELO, MS 38801	RS
27	40399	089E3018400	805 N MADISON ST	FIELDER ARTHUR Jafa JR & ROWENA	5203 GOLF VALLEY WAY	STONE MTN, GA 20033	SB
28	40400	101B0224600	2315 ENGLEWOOD DR	MORRIS MICHAEL SCOTT & MICHAELA G	2315 ENGLEWOOD	TUPELO, MS 38801	RS
29	40403	089F3005500	539 W BARNES ST	CLARK JO ANN	545 WILLOWRIDGE WAY	AVONDALE ESTATES, GA 30002	SB
30	40404	089F3005600	536 WALKER ST	SANDERS SHEILA	2512 SOUTH GLOSTER	TUPELO, MS 38801	SB
31	40405	077P3521500	2308 MILLSAP ST	TWIN PROPERTIES LLC	1223 NELLE STREET	TUPELO, MS 38804	RS
32	40406	077P3512700	602 MAYNARD DR	JOEY SPEARMAN RENTALS LLC	173 CR 13	TUPELO, MS 38801	RS
33	40407	077J3506900	331 BATTLEFIELD DR	GENE TAYLOR CONSTRUCTION CO INC	2477 AMELIA LANE	TUPELO, MS 38801	JLS
34	40409	077J3506700	309 BATTLEFIELD DR	GENE TAYLOR CONSTRUCTION CO INC	2477 AMELIA LANE	TUPELO, MS 38801	JLS

Preliminary Lot Mowing Report for 5/3/2022

Item # 1.

	Violation Ref	Parcel	Location	Owner	Owner Address	Owner City State Zip	Inspector
35	40410	077J3507000	343 BATTLEFIELD DR	KRAUSS KIM LOONAN	604 SMOKEY MOUNTAIN DR	TUPELO, MS 38801	JLS
36	40411	101B0208300	607 MAYNARD DR	TUPELO RENTAL PROPERTIES LLC	1879 N COLEY RD	TUPELO, MS 38801	RS
37	40412	101B0208700	615 MAYNARD DR	HEAVENER NADA E	615 MAYNARD	TUPELO, MS 38801	RS
38	40415	101B0210200	616 MAYNARD DR	SIMMONS JAMES W JR & APRIL	616 MAYNARD DR	TUPELO, MS 38801	RS
39	40416	089F3005000	517 W BARNES ST	ROBINSON ANGELA	146 12TH STREET	RICHMOND, CA 94801	SB
40	40423	101U1103900	2612 CAMELLA CV	SPRING LAKE LLC	PO BOX 2066	TUPELO, MS 38803	JLS
41	40424	101U1104100	2627 CAMELLIA CV	GENE TAYLOR CONSTRUCTION CO INC	2477 AMELIA LANE	TUPELO, MS 38801	JLS
42	40425	101U1100100	S THOMAS ST	SPRING LAKE LLC	PO BOX 2066	TUPELO, MS 38803	JLS
43	40426	113E0613400	902 S GLOSTER ST	WALGREEN CO	104 WILMOT RD MS# 1420	DEERFIELD, IL 60015	RS
44	40427	113E0611900	910 RIDGECREST DR	EMERSON CYNTHIA HALE	771 HALE DR	TUPELO, MS 38801	RS
45	40428	113E0609100	715 GARFIELD ST	PHARMACY INNOVATIONS REAL ESTATE HOLDING	186 MEDICAL DR	WINFIELD, AL 35594	RS
46	40429	077Q3617900	1701 W MAIN ST	SRB MCGRATH LLC	622 ALLEN ST	TUPELO, MS 38801	RS

Preliminary Lot Mowing Report for 5/3/2022

Item # 1.

	Violation Ref	Parcel	Location	Owner	Owner Address	Owner City State Zip	Inspector
47	40431	075S1600102	3424 WALSH RD	WILLIAMS JIMMIE ESTATE	P O BOX 184	BELDEN, MS 38826	SB
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AGENDA REQUEST

TO: Mayor and City Council

FROM: Missy Shelton, Council Clerk

DATE April 28, 2022

SUBJECT: IN THE MATTER OF MINUTES OF APRIL 19, 2022 COUNCIL MEETING

Request:

FOR YOUR REVIEW AND APPROVAL

REGULAR CITY COUNCIL MEETING

MUNICIPAL MINUTES CITY OF TUPELO

STATE OF MISSISSIPPI

APRIL 19, 2022

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, 2022, 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 Rosie Jones gave the invocation and Council Member Chad Mims led the pledge of allegiance. Council President Buddy Palmer called the meeting to order at 6:00 p.m.

CONFIRMATION OR AMENDMENT TO THE AGENDA AND AGENDA ORDER

Council Member Bryan moved, seconded by Council Member Beard, to confirm the agenda and agenda order, as presented, with the following change:

DELETE: Item #17 - In the Matter of Ratification of Land Conveyance Documents

The vote was unanimous in favor.

PROCLAMATIONS, RECOGNITIONS AND REPORTS AGENDA

PUBLIC RECOGNITION

Council President Palmer asked the Council members who attended the recent CDF trip to Oklahoma City, Oklahoma, give a brief statement about the trip. Council Member Davis said it was a great trip and they came home with good ideas that the City of Tupelo can implement. Council Member Beard said they were able to reaffirm some of the actions taken by the City of Tupelo such as green space, downtown, streets, etc. They also learned of finance options that might be available. Council Member Jones said there was a feeling of unity and that the projects they saw incorporated all parts of the City. Council Member Gaston said a lot of the projects they saw were revenue producing and quality of life venues. Council Member Mims said he was impressed with the fiscal responsibility. He also was impressed with the focus on the quality of life projects.

Council Member Davis reminded and invited everyone to the Community Forward Festival scheduled for coming Saturday - April 23, at Gum Tree Park. The festival is geared toward building relationships between the community and the Police Department.

Council Member Mims introduced the Tupelo High School Choir, Synergy, who were present at the meeting. After reading a list of the accomplishments from the previous year, the choir entertained the room with an a cappella selection. The list of members is attached to these minutes as APPENDIX A.

MAYOR'S REMARKS

Mayor Todd Jordan said the Oklahoma City trip was very enlightening. He was especially impressed with the cleanliness and the large parks. He recognized a list of those who participated in the preparations of the documentation of the RAISE grant, which was submitted last week.

IN THE MATTER OF PUBLIC HEARING FOR DEMOLITION

No one spoke during the public hearing concerning the demolition of 1104 Chapman St - Parcel # 077M-36-059-00.

CITIZEN HEARING

vOz Kapenekas

Mr. vOz Kapenekas, owner of KRC Properties LLC - Songshine LLC, located at 114 N Broadway and 1102 Chickasaw Trail, gave his personal observations concerning the nature of life in Tupelo and its relationship with municipal government. The handout he shared is attached to these minutes as APPENDIX B.

JANE MYERS

Ms. Jane Myers, of 2106 President Ave, addressed the Council with her concerns of fireworks in the City of Tupelo.

CHARLES JOHNSTON

Mr. Charles Johnston did not appear to speak with the Council.

IN THE MATTER OF MINUTES OF APRIL 5, 2022 COUNCIL MEETING

Council Member Mims moved, seconded by Council Member Gaston, to approve the minutes of the Regular Council meeting held on April 5, 2022. The vote was unanimous in favor.

IN THE MATTER OF BILL PAY

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

IN THE MATTER OF TUPELO LICENSE COMMISSION MINUTES

Council Member Bryan moved, seconded by Council Member Jones, to approve the minutes of the March 22, 2022, meeting of the Tupelo License Commission. The vote was unanimous in favor.
APPENDIX D

IN THE MATTER OF REAPPOINTMENT OF STUART JOHNSON TO THE TUPELO MAJOR THOROUGHFARE PLAN CITIZENS LOBBYING AND OVERSIGHT COMMITTEE

Council member Gaston moved, seconded by Council Member Beard, to approve the re-appointment of Stuart Johnson to the Major Thoroughfare Committee effective April 19, 2022 representing Ward 6. The vote was unanimous in favor. APPENDIX E

IN THE MATTER OF DEMOLITION/LIEN RESOLUTION

Council Member Davis moved, seconded by Council Member Beard, to approve a Resolution Adjudicating Cost and Assessing Lien Against Real Property, under Miss. Code Ann. 21-19-11(1972) as amended, for 583 Tank Street, which was in such a condition to be a menace to the public health, safety and welfare of the community and in need of demolition pursuant to Miss. Code Ann. 21-19-11 (1972) as amended, and to assess the amount as a lien on the real property. The vote was unanimous in favor. APPENDIX F

IN THE MATTER OF PROPERTY FOR DEMOLITION

Council Member Bryan moved, seconded by Council Member Beard to approve the following property on the public hearing demolition list, which is in such condition to be a menace to the public health, safety and welfare of the community and in need of cleaning, as authorized by Miss. Code § 21-19-11 (1972) as amended:

1104 Chapman Street (PN#077M-36-059-00)

The vote was unanimous in favor. APPENDIX G

IN THE MATTER OF AWARD OF BID NO. 2022-009PW AIR PARK ROAD SCRUB SEAL

Bids were received by the City of Tupelo for Bid No 2022-009PW Air Park Road Scrub Seal with an alternate - Holly Hill Road. Council Member Gaston moved, seconded by Council Member Bryan, to award the lowest and best bid submitted by Pavement Restorations for a total amount of \$113,900.00 which includes Alternate No. 1- Holly Hill Road and to allow the Mayor and City Clerk to execute any and all documents, subject to subsequent ratification by the City Council. The vote was unanimous in favor. APPENDIX H

IN THE MATTER OF BID AWARD FOR PROJECT NO. T19-515 EASON BOULEVARD IMPROVEMENTS (VETERANS – BRIAR RIDGE)

Bids were received by the City of Tupelo Eason Boulevard Improvements (Veterans - Briar Ridge). Council Member Beard moved, seconded by Council Member Davis, to award the lowest and best bid to Cook & Sons for a total of \$4,102,161.63 and to allow the Mayor and City Clerk to execute any and all documents, subject to subsequent ratification by the City Council. The vote was unanimous in favor. APPENDIX I

IN THE MATTER OF MAJOR THOROUGHFARE MINUTES FROM FEBRUARY 14, 2022 AND MARCH 7, 2022

Council Member Beard moved, seconded by Council Member Davis, to approve the minutes of the Major Thoroughfare meetings held on February 14 and March 7, 2022. The vote was unanimous in favor. APPENDIX J

IN THE MATTER OF APPROVAL TO REMOVE FROM ASSETS AND AUCTION 3 PARK AND RECREATION VEHICLES

Council Member Beard moved, seconded by Council Member Gaston, to approve three vehicles as surplus, no longer needed for use by the City, and sell them at auction. The vote was unanimous in favor. APPENDIX K

IN THE MATTER OF BID APPROVAL – ROADWAY MAINTENANCE PROGRAM 2022 ANNUAL TERM BID – 2022-014PW

Council Member Davis moved, seconded by Council Member Beard, to award Bid # 2022-014PW annual term bid for the 2022 Tupelo Roadway Maintenance Program to the lowest and best bid of Hodges Construction in the total amount of \$20,513.00. The vote was unanimous in favor. APPENDIX L

IN THE MATTER OF ACCEPTANCE OF DONATION DEED TO CITY ON TOLBERT STREET AND RATIFICATION OF VACATION OF RIGHT OF WAY ON SOUTH SIDE OF RHEA STREET

Council Member Davis moved, seconded by Council Member Bryan, to approve 'An Order to Accept the Conveyance of Land from Gary Sparkman to the City of Tupelo', as requested by the Administration. This item was initially discussed in February when a resolution was passed declaring property as surplus. The vote was unanimous in favor. APPENDIX M

IN THE MATTER OF ORDER AUTHORIZING REAL PROPERTY EXCHANGE ON TOLBERT STREET TO CORRECT PROPERTY LINES

Council member Bryan moved, seconded by Council Member Beard, to approve the acceptance of donation deed to City on Tolbert Street and the ratification of vacation of right of way on south side of Rhea Street. This order approving real property exchange with Kenneth Mayfield will correct a property lines discrepancy. The vote was unanimous in favor. APPENDIX N

IN THE MATTER OF ORDER AUTHORIZING CLOSURE OF PUBLIC ACCESS FROM PARK STREET TO PRIVATE PROPERTY NEAR BNSF RAILROAD, COMPENSATING OWNER FOR DAMAGES BY PROVIDING ACCESS ON JEFFERSON STREET AND ABANDONING PORTION OF PLATTED ALLEY TO ADJOINING PROPERTY OWNERS

Council Member Bryan moved, seconded by Council Member Jones, to approve an 'Order Authorizing Closure of Public Access from Park Street to Private Property Near BNSF Railroad, Compensating Owner for Damages by Providing Access on Jefferson Street and Abandoning Portion of Platted Alley to Adjoining Property Owners'. The vote was unanimous in favor. APPENDIX O

EXECUTIVE SESSION

Council Member Davis moved, seconded by Council Member Bryan, to determine the need for an executive session. Attorney Ben Logan said the session will be for the purpose of the possibility of acceptance of donation of real property under Miss. Code Anno. 25-41-7(g) (1972 as amended). The vote was unanimous in favor at 6:44 p.m.

Council Member Bryan moved, seconded by Council Member Gaston, to close the regular session and enter executive session for purpose of the possibility of acquisition of real property under Miss. Code Anno. 25-41-7 (g) (1972 as amended). The vote was unanimous in favor.

After discussion in executive session, Council Member Davis moved, seconded by Council Member Jones to return to the regular meeting at 7:00 p.m. The vote was unanimous in favor.

IN THE MATTER OF AN ORDER AUTHORIZING THE PURCHASE OF CERTAIN REAL PROPERTY TO THE CITY OF TUPELO

Council Member Bryan moved, seconded by Council Member Davis, to approve 'An Order Authorizing the Purchase of Certain Real Property' located at 508 N Madison from Barcia Group LLC, for the negotiated price of \$81,000 and to authorize the Mayor and City Clerk to execute any necessary documents to be subsequently ratified by the City Council . The vote was unanimous in favor.
APPENDIX P

IN THE MATTER OF AN ORDER AUTHORIZING OPTION TO PURCHASE AGREEMENT FOR CERTAIN REAL PROPERTY BY THE CITY OF TUPELO.

Council Member Bryan moved, seconded by Council Member Beard, to approve 'An Order Authorizing Option to Purchase Agreement for Certain Real Property by the City of Tupelo' located south of Eason Blvd between Town Creek and Ryder Street from BSB Associates Partnership for the overall sale price of \$658,000.00. The Order includes up to two Options to Purchase for \$15,000.00 each and to authorize the Mayor and City Clerk to execute necessary documents to be subsequently ratified by the City Council. APPRIDIX Q

ADJOURNMENT

There being no further business to come before the Council at this time, Council Member Beard moved, seconded by Council Member Gaston, to adjourn the meeting at 7:02 p.m. The vote was unanimous in favor. This the 19th day of April, 2022.

Buddy Palmer, President
City Council

ATTEST:

Missy Shelton, Clerk of the Council

Todd Jordan, Mayor

Date



AGENDA REQUEST

TO: Mayor and City Council
FROM: Kim Hanna, COO/City Clerk
DATE April 28, 2022
SUBJECT: IN THE MATTER OF BILL PAY

Request:

For your approval



AGENDA REQUEST

TO: Mayor and City Council

FROM: Kim Hanna, CFO

DATE May 3, 2022

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

Request:

There are no items for approval at this time.

ITEMS:

None



AGENDA REQUEST

TO: Mayor and City Council
FROM: Kim Hanna, CFO
DATE May 3, 2022
SUBJECT: IN THE MATTER OF THE 2023 BUDGET CALENDAR **KH**

Request:

I am requesting the approval of the 2023 Budget Calendar.

ATTACHED:
2023 Budget Calendar

PROPOSED BUDGET CALENDAR FY 2023

<u>Date</u>	<u>Process</u>
May	Distribute departmental request forms and notification of due date
June 10	Deadline for return of department request to the Finance Department
July	Revenue Projection (Section 21-35-5)
July 20 & 27	Publish notice twice for Public Hearing on Budget
August 2	Hold Public Hearing on Budget (Section 21-35-5)
August 8 - 26	Hold Budget Planning Sessions (To be determined by the Council)
August 8 - 15	Review anticipated Tax Levy to determine whether public notice is required for any levy
August 24 & 31	Publish notice of Public Hearing on Tax Levy for two weeks prior to adoption of the budget
September 6	Hold Public Hearing on Tax Levy (Section 27-39-203)
September 6	Adopt Lee County Tax Assessment Rolls (No later than 9/15/2022) (Section 21-33-45)
September 13	Set Tax Levy necessary to support adopted budget (No later than 9/15/2022) (Section 21-33-45)
September 13	Adopt Budget (No later than 9/15/2021) (Code Section 21-35-9)
September 14	Deliver Tax Levy to Lee County Tax Assessor (No later than 9/15/2022) (Code Section 21-33-45)
September 14	Deliver Tax Levy to State Department of Audit (No later than 9/15/2022) (Code Section 21-33-45)
September 20	Resolution of Fireman Fund for FY 2023
September 15 – 29	Give Public Notice of availability of budget for inspection by 9/30/2022
September 19 - 27	Publish adopted budget (Code Section 21-35-5)
October 4	Approve Municipal Compliance Questionnaire (State Department of Audit)



AGENDA REQUEST

TO: Mayor and City Council

FROM: Ben Logan, City Attorney

DATE April 21, 2022

SUBJECT: IN THE MATTER OF RATIFICATION OF LEASE AGREEMENT BETWEEN CITY OF TUPELO AND HTG PROPERTY HOLDINGS, LLC. **BL**

Request:

Please ratify the attached lease agreement between the City of Tupelo and HTG Property Holdings, LLC. concerning 7.83 acres of real property owned by the City of Tupelo located at 545 Commerce Street.

LEASE AGREEMENT

SECTION 1 – BASIC LEASE PROVISIONS

1.01. **Date and Parties.** This lease is made as of the 7th day of February, 2020, between The City of Tupelo, Mississippi (“Landlord”) and HTG Property Holdings, LLC, a Mississippi limited liability company (“Tenant”).

1.02. **Real Property.** Landlord is owner of certain real property consisting of 7.83 acres (the “Real Property”) and improvements consisting of a building containing 46,174 square feet and an accessory building containing 2,750 square feet (collectively, the “Buildings”), located at 545 Commerce Street in the City of Tupelo, County of Lee, State of Mississippi, more particularly described in Exhibit “A” hereto. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord both the Real Property and the Buildings. Both the Real Property and the Buildings are collectively referred to as the “Leased Property”.

1.03. **Use.** Tenant shall sublease the Leased Property to Hyperion Technology Group, Inc., a Mississippi corporation (“Hyperion”), who shall use it for its business of engineering, research and development, as well as manufacturing and distributing its products and for uses incidental thereto including, without limitation, storage of containers, materials, supplies and the parking of vehicles and trailers, and any other lawful activities consented to by Landlord. Tenant shall not create a nuisance or use the Leased Property for any immoral or illegal purposes.

1.04. **Term.** The term of this lease shall commence on February 7, 2020 (the “Beginning Date”) and shall continue for one hundred eighty (180) months, ending at midnight on the last day of January, 2035 (the “Term”).

1.05. **Acceptance.** Neither Landlord nor any of its agents has made any representations with respect to the Leased Property except as expressly set forth herein. The taking of possession of the Leased Property by Tenant shall be conclusive evidence that Tenant accepts the same “as is” and that the Leased Property was in good condition at the time possession was taken. The foregoing notwithstanding, Tenant does not assume any obligations or liabilities arising, resulting from or related to the presence of any hazardous, toxic or medical wastes, substances or materials on the Leased Property or any adjacent property.

SECTION 2 – RENT AND TAXES

2.01. **Rent.** Tenant agrees to pay to Landlord as rent for the Leased Property the sum of Twelve Thousand Four Hundred Thirty Dollars (\$12,430.00) per month during the Term, with the first month’s rent being pro-rated. Each monthly rental payment shall be paid:

- (i) without advance notice, demand, offset, or deduction;
- (ii) by the first day of each calendar month during the term; and

(iii) to Landlord at P.O. Box 588, Tupelo, Mississippi 38802-0588, or as Landlord may specify in writing to Tenant.

If Tenant fails to pay part or all of the rent within ten (10) days after it is due, Tenant shall also pay a late charge of \$500.

2.02. Real Property Tax. As city owned property, there will be no ad valorem taxes due on the real property. Before delinquency, Tenant shall pay all school taxes levied against the Leased Property, pro-rated for any incomplete calendar years of this lease.

2.03. Personal Property Taxes. Before delinquency, Tenant shall pay all taxes assessed against all trade fixtures and personal property on the Leased Property and all taxes assessed and applicable to the ownership and operation of the business of Tenant, pro-rated for any incomplete calendar years of this lease. Tenant's failure to timely pay these sums shall entitle Landlord to the same remedies it has upon Tenant's failure to pay rent.

SECTION 3 – AFFIRMATIVE OBLIGATIONS

3.01. Compliance with Laws. Tenant shall comply with all applicable laws: (i) regarding the physical condition of the Leased Property; and (ii) that do not relate to the physical condition of the Leased Property but relate to the lawful use of the Leased Property and with which only the occupant can comply, such as laws governing maximum occupancy, workplace smoking, and illegal business operations, such as gambling.

3.02. Utilities and Janitorial. Tenant shall pay all water and sewer service, trash removal, electricity and natural gas service for the Leased Property. Tenant shall also pay all telephone charges, coaxial cable television service, and janitorial services for the Leased Property, together with any other utilities.

3.03. Repairs, Maintenance and Additions.

(a) **Landlord.** Landlord shall be responsible for repairs and replacements to the Buildings that are outside the scope of normal, routine maintenance (which shall be the responsibility of Tenant), including, without limitation, to the exterior walls and structure of the Buildings, the roofs, the foundation, subfloors, load bearing walls and other structural elements, and all paved areas, except if same was caused by the negligence, willful misconduct, action or failure to act, including the failure to perform the repairs and maintenance required by 3.03(b), of Tenant, its agents, invitees, servants or employees, for all of which Tenant shall be solely responsible.

(b) **Tenant.** Tenant shall, at its own expense, keep and maintain the Buildings in good repair, including, but not limited to, the interior walls, heating and air conditioning systems, plumbing, electrical, mechanical systems, windows, interior and exterior lighting and providing janitorial services, and shall keep all portions of the Leased Property in good condition, order and repair. Tenant shall be responsible for keeping the paved areas of the Leased Property free of debris, including but not limited to, ice and snow.

(c) **Surrendering the Leased Property.** Upon termination of this lease, and subject to the provisions of Section 12, Tenant shall surrender the Leased Property to

Landlord, the Buildings and paved areas being in the same condition that they were in on the Beginning Date except for ordinary wear and tear and Alterations. On surrender, Tenant shall remove from the Leased Property its personal property, trade fixtures, and any Alterations required to be removed under paragraph 4.01 and repair any damage to the Leased Property caused by the removal. Any items not removed by Tenant as required above shall be considered abandoned. Landlord may dispose of abandoned items as Landlord chooses and bill Tenant for the cost of their removal and disposal, minus any revenues received by Landlord from their disposal.

SECTION 4 – NEGATIVE OBLIGATIONS

4.01. Alterations.

(a) **Definitions.** “Alterations” means structural alterations, additions, substitutions, installations, changes, and improvements.

(b) **Consent.** Tenant shall not make Alterations without Landlord’s advance written consent. Landlord’s consent shall not be unreasonably withheld or unduly delayed for Alterations to the Leased Property that do not adversely affect the Buildings’ appearance, value, structural strength, and insurance classification. Non-structural changes shall not be considered Alterations, and no Landlord consent is required for Tenant to make them.

(c) **Payment and Ownership of the Alterations.** Alterations made under this paragraph shall be at Tenant’s expense. The Alterations shall belong to Landlord when this lease ends, except for those Alterations required by Landlord to be removed by Tenant. Nevertheless, Tenant may, so long as no event of default occurs, remove its trade fixtures, furniture, equipment, and other personal property if Tenant promptly repairs any damage caused by their removal.

4.02. **Assignment and Subleasing.** Tenant shall not transfer, mortgage, encumber, assign (including an assignment by operation of law), or sublease all or part of the Leased Property without the prior written consent of Landlord, which shall not be unreasonably withheld; provided, however, that Landlord’s approval of any such sublease shall in no way alter or diminish Tenant’s obligations to Landlord hereunder, or relieve Tenant of any duties or liabilities in connection herewith. The foregoing notwithstanding, Landlord hereby approves a sublease of the Leased Property to Hyperion Technology Group, Inc.

SECTION 5 – INSURANCE

5.01. Insurance.

(a) **Building Insurance.** Landlord shall keep the Buildings insured against damage and destruction by windstorm, fire, vandalism, and other similar perils for replacement cost. The limits of said insurance shall initially be 2,500,000. Following completion of the improvements, the insurance shall be increased to Renovated Construction Value following an updated appraisal.

(b) **Personal Property Insurance.** Tenant shall keep its personal property and trade fixtures on the Leased Property insured with “all risk” insurance. Tenant also shall keep any improvements or Alterations made to the Leased Property insured to the same degree as Tenant’s personal property.

(c) **Liability Insurance.** Tenant shall maintain commercial general liability insurance, including bodily injury, property damage and contractual liability coverage, with a minimum combined single limit of liability of \$1,000,000 for bodily injuries or deaths of persons occurring in or about the Leased Property and any property damage thereof.

(d) **Workers’ Compensation Insurance.** Tenant shall maintain all workers’ compensation and employers’ liability insurance coverage required under applicable workers’ compensation acts.

(e) **Insurance Criteria.** Insurance policies required by this lease to be maintained by Tenant shall:

- (i) be issued by insurance companies licensed to do business in the State of Mississippi with general policyholder’s ratings of at least A- and a financial rating of at least XI in the most current Best’s Insurance Reports available on the date in paragraph 1.01 or issued by Industrial Risk Insurers or a comparable company approved by a nationally recognized independent insurance consultant;
- (ii) name Landlord as an additional insured (except for 5.01(d));
- (iii) provide that the insurance not be cancelled or materially changed in the scope or amount of coverage unless 30 days’ advance notice is given to Landlord;
- (iv) be primary policies—not as contributing with, or in excess of, the coverage that the other party may carry;
- (v) have deductibles not greater than \$10,000; and
- (vi) be maintained during the entire term.

(f) **Evidence of Insurance.** By the Beginning Date and upon each renewal of its insurance policies, the party responsible for insurance as provided above shall give to the other party a certificate of insurance specifying amounts, types of coverage, and the insurance criteria listed in paragraph 5.01(e). The policies shall be renewed or replaced and maintained by the party responsible therefor. In the event such party fails to give the required certificate within 30 days after notice of demand for it, the other party may obtain and pay for that insurance and receive reimbursement from the party obligated to provide insurance as provided above.

5.02. **Indemnification.** Landlord shall not be liable or responsible in any way for any claims or damages to persons or property sustained in, on or about the Leased Property or arising out of Tenant's use of the Leased Property, during the term of this lease or any continuation, holdover, extension or renewal hereof (excepting only such claims and damages as may be caused by the negligence or willful misconduct of Landlord), and the Tenant at all times agrees to defend, indemnify and save harmless the Landlord from all losses, damages, liabilities and expenses, including attorney's fees, for any of the foregoing.

Except to the extent same was caused by the negligence or intentional misconduct of Landlord or its agents, contractors or employees, Landlord shall not be liable for and Tenant will indemnify and save harmless Landlord from any and all fines, suits, claims, demands, costs, and actions of any kind (including reasonable attorney's fees) by reason of any negligence or misconduct, including but not limited to environmental (but only to the extent caused by Tenant, its agents, contractors, employees or invitees after the effective date of this Lease), or any breach, violation or non-performance of any covenant hereof on the part of Tenant or Tenant's agents, employees, or invitees. Landlord will indemnify and save harmless Tenant from any and all fines, suits, claims, demands, costs, and actions of any kind arising under this Lease (including reasonable attorney's fees) by reason of any breach, violation or non-performance of any covenant hereof on the part of Landlord required to be performed hereunder, negligence or intentional misconduct on the part of Landlord or its agents, contractors or employees, or on account of any environmental condition existing on the Leased Property on or before the effective date of this Lease. The obligations of this paragraph shall survive the termination of this Lease.

SECTION 6 – LOSS OF THE LEASED PROPERTY

6.01. **Damage to the Buildings.** If the Leased Property is damaged or destroyed by fire or any other cause, Tenant will immediately notify Landlord. Landlord covenants and agrees that in case of damage to or destruction of the Leased Property by fire or other casualty, it will promptly repair, restore and rebuild the same as nearly as possible to the condition it was immediately prior to such damage or destruction, provided, however, that if such destruction shall be substantial and/or of such extent as to render the Leased Property untenable, then Tenant shall have the election and option to purchase the Leased Property pursuant to Section 12 hereof, in which case all insurance proceeds shall be paid to Tenant; otherwise, any insurance proceeds shall be paid to the parties as their interests may appear for the purpose of repair and restoration of the Leased Property.

6.02. **Condemnation.** Landlord shall not commence eminent domain proceedings affecting the Leased Property during the Term of this lease. If eminent domain proceedings are commenced by other entities, Landlord shall immediately notify Tenant of same. If the eminent domain proceedings affect a substantial part of the Leased Property, Tenant shall have the election and option to purchase the Leased Property pursuant to Section 12 hereof, in which case all condemnation proceeds shall be paid to Tenant; otherwise, any condemnation proceeds shall be paid to the parties in accordance with their interests in the Leased Property.

SECTION 7 - DEFAULT

7.01. **Tenant's Default.** The following shall, at Landlord's option, constitute a default by Tenant under the terms of this lease:

- (i) failure by Tenant to pay the rent provided herein or any other payment required herein to be made by Tenant hereunder or any part thereof, which default shall continue for 10 days after Tenant has received written notice thereof by Landlord;
- (ii) failure by Tenant to perform any other of Tenant's agreements herein contained which default shall continue for 30 days after Tenant has received written notice thereof by Landlord, provided that if the nature of such default is such that it cannot be reasonably cured within such 30 days, Tenant shall not be deemed to be in default if it shall within such period commence such cure and thereafter diligently prosecute the same to completion; or
- (iii) the making by Tenant of any general assignment for the benefit of creditors; the commencement by or against Tenant of a proceeding under any federal or state bankruptcy act or other act for the relief of insolvent debtors (including any arrangement or reorganization proceedings); the appointment of a trustee or receiver to take possession of Tenants assets or the attachment or seizure by execution of Tenant's assets in the Leased Property, provided that in the event of the commencement of any such proceeding, appointment, attachment or seizure of Tenant's assets, tenant shall have 30 days in which to secure the dismissal or abandonment thereof.

7.02. **Landlord's Remedies.**

(a) **Remedies.** Landlord in addition to any other remedies provided for in this lease or under the law, or in equity, may do any one or more of the following if Tenant commits a default under paragraph 7.01, all of which shall be subject to the limitations of Section 10 hereof:

- (i) end this lease, and Tenant shall then surrender the Leased Property to Landlord;
- (ii) enter and take possession of the Leased Property either with or without process of law and remove Tenant, with or without having ended the lease; and
- (iii) alter locks and other security devices at the Leased Property.

Tenant waives claims for damages by reason of Landlord's rightful reentry, repossession, or alteration of locks or other security devices and for damages by reason of any rightful use of legal process, subject to the provisions of Section 10.

(b) **No Surrender.** Landlord's exercise of any of its remedies or its receipt of Tenant's keys shall not be considered an acceptance or surrender of the Leased Property by Tenant. A surrender must be agreed to in a writing signed by both parties.

(c) **Rent.** If Landlord ends this lease or ends Tenant's right to possess the Leased Property because of a default, following an additional thirty (30) day grace period, Landlord may hold Tenant liable for rent and other indebtedness accrued to the date the lease ends. Tenant shall also be liable for the rent and other indebtedness that otherwise would have been payable by Tenant during the remainder of the term had there been no default. The amounts owing by Tenant in the event of default under this Section 7 shall be discounted to present value then reduced by a reasonable fair market rental rate. Landlord shall seek to mitigate its damages.

(d) **Other Expenses.** Tenant shall also be liable for that part of the following sums paid by Landlord and attributable to that part of the term ended due to Tenant's default:

- (i) reasonable broker's fees incurred by Landlord for reletting part or all of the Leased Property;
- (ii) the reasonable cost of removing and storing Tenant's property; and
- (iii) other necessary and reasonable expenses incurred by Landlord in enforcing its remedies, including reasonable attorney fees.

7.03. **Survival.** The remedies permitted by Section 7 and parties' indemnities in paragraph 5.02 shall survive the ending of this lease.

7.04. **Landlord's Lien.** Landlord shall have a lien on every right and interest of Tenant in and to this lease, and on any building or improvement on or hereafter placed on the Leased Property, and on any furnishings, equipment, fixtures, or other personal property of any kind belonging to Tenant, or the equity of Tenant therein, on the Leased Property. Such lien is granted for the purpose of securing the payment of rents, taxes, assessments, charges, liens, penalties and damages herein covenanted to be paid by Tenant, and for the purpose of securing the performance of all of Tenant's obligations under this lease. Such lien shall be in addition to all rights of Landlord given under statutes of the State of Mississippi, which are now or shall hereinafter be in effect.

SECTION 8 - NONDISTURBANCE

8.01. **Quiet Enjoyment.** Landlord covenants that Landlord has full right to make this lease and Landlord covenants and agrees that Tenant, upon paying all rent and all other charges herein provided for and observing and keeping the covenants, agreements and conditions of this lease on its part to be kept, shall lawfully be entitled to quietly hold, occupy and enjoy the Leased Property during the term of this lease and that Landlord shall place Tenant in quiet possession thereof.

SECTION 9 – LANDLORD’S RIGHTS

9.01. Mechanic’s Liens.

- (a) Tenant shall, within 20 days after receiving notice of any mechanic’s lien for material or work claimed to have been furnished to the Leased Property on Tenant’s behalf and at Tenant’s request:
 - (i) discharge the lien; or
 - (ii) post a bond equal to the amount of the disputed claim with companies reasonable satisfactory to Landlord. If Tenant posts a bond, it shall contest the validity of the lien. Tenant shall indemnify, defend, and hold Landlord harmless from losses incurred from these liens.
- (b) **Landlord’s Discharge.** If Tenant does not discharge the lien or post the bond within the 20 day period, Landlord may pay any amounts, including interest and legal fees, to discharge the lien. Tenant shall then be liable to Landlord for the amounts paid by Landlord.

9.02. **Right to Enter.** Subject to Section 10, Landlord and its agents, servants, and employees may enter the Leased Property at reasonable times upon prior notice to Tenant, and at any time in the event of an emergency, without charge, or abatement of rent, to:

- (i) examine the Leased Property;
- (ii) make repairs, alterations, improvements, and additions either required by the lease or advisable to preserve the integrity, safety, and good order of part or all of the Leased Property;
- (iii) show the Leased Property to prospective lenders or purchasers and, during the 90 days immediately before this lease ends, to prospective tenants, accompanied, if requested by Tenant or by a Tenant representative; and
- (iv) remove any Alterations made by tenant in violation of paragraph 4.01.

9.03. **Permitted Signs.** Tenant may install, erect and maintain upon the Leased Property all signs necessary to the conduct of its business. Landlord may not install a “To Rent” or “For Sale” sign during the Term of this Lease or the Exclusive Option period provided in Section 12 hereof.

SECTION 10 – LIMITATIONS ON LANDLORD’S RIGHT OF ENTRY

10.01. **Limitations on Landlord’s Right of Entry.** This Lease is contingent upon the Leased Property being cleared at not less than a Top Secret level by the United States Department of Defense, Defense Security Service (DSS). Tenant shall provide DSS with copies of the plans and such other information as will be required to receive the facility clearance (FCL). Federal law and regulations impose limits upon access to cleared facilities, and all provisions of this Agreement providing for Landlord entry or re-entry into the Leased Property shall be subject to the restrictions of this Section 10.

- (a) Landlord shall provide advance notice of its desire to enter the Leased Property pursuant to this Lease, including, but not limited to, paragraphs 7.02 and 9.02 hereof, and its representatives shall provide proper identification to the security desk, sign in, and be issued badges which shall require the representatives to be escorted by an employee of Tenant. Landlord’s representatives shall not be foreign nationals, and Landlord shall not have access to closed or restricted areas.
- (b) In the event of an emergency involving natural causes (such as fire, tornado, wind or other storm damage), Landlord shall be permitted to access the Leased Property in order to secure or protect the Leased Property, but shall use its best efforts to contact Tenant contemporaneously with entrance or as soon thereafter so that Tenant may have a representative present. In any such entry, Landlord shall use its best efforts to protect and preserve Tenant’s records, data, computers and closed or restricted areas, and to restrict entry by foreign nationals. If Landlord is unable to reach Tenant, it shall notify the Federal Bureau of Investigation (662-234-1713) prior to entering the Leased Property.
- (c) In the event of termination of this Lease or Tenant’s default under this Lease which results in Landlord’s retaking of the Leased Property as provided herein, Landlord’s entry of the Leased Property shall be subject to the provisions of 10.01(a) hereof, and Tenant shall be allowed to peaceably remove its personal property (and the property of others, including the United States Government).

SECTION 11 – ENVIRONMENTAL COMPLIANCE

11.01. **Tenant’s Compliance.** Tenant covenants and agrees that it will comply with state and federal environmental laws in the use, storage, treatment or transportation of any hazardous substances. Tenant shall, at Tenant’s sole expense, properly store or dispose of such substances as required by state and federal environmental laws. Tenant agrees that it will not cause the release, leak, discharge, spill, disposal, or emission of hazardous substances in, on, or under the Leased Property. Tenant does not assume any obligations or liabilities arising, resulting from or related to the presence of any hazardous, toxic or medical wastes, substances or materials on the Leased Property or any adjacent property.

SECTION 12 – EXCLUSIVE OPTION TO PURCHASE

12.01. **Tenant's Exclusive Option to Purchase.** Tenant shall have the sole and exclusive option to purchase the Leased Property (the "Option") during the Term of this lease, or at the conclusion of the Term of this lease, as provided in this Section 12.

12.02. **Notice.** Tenant shall exercise the Option by giving Landlord written notice of its intent to exercise the Option during the Term of this Lease. Closing shall be not less than thirty (30) nor more than sixty (60) days following notice (which may be following the conclusion of the Term of this lease), with the exact date and time to be mutually satisfactory to Landlord and Tenant.

12.03 **Purchase Price.** Landlord purchased the Leased Property using the proceeds of a Capital Improvement Revolving ("CAP") Loan with the Mississippi Development Authority. Landlord shall pay down the CAP Loan with Tenant's Rent payments. The purchase price ("Purchase Price") for the purchase of the Leased Property by Tenant shall be the payoff amount of the CAP Loan at the time of Closing, after application and payment to the Mississippi Development Authority of all Rent paid by Tenant to Landlord hereunder. If the Closing takes place following the conclusion of this Lease, meaning the CAP Loan has been paid in full, then the Purchase Price shall be the sum of One Dollar (\$1.00).

12.04 **Title.** At the Closing, Landlord shall convey good and marketable title to the Leased Property to Tenant by General Warranty Deed, subject only to taxes for the then current year, easements and rights of way of record, and prior mineral reservations. Prior to Closing, Tenant may obtain a Title Certificate upon which title insurance with an insurer of its choosing may be obtained. Should said certificate reflect any other exceptions to the title unacceptable to Tenant, it shall notify Landlord in writing of any defects within fifteen (15) days of receipt of the certificate. Landlord shall have a reasonable time (but not more than forty-five (45) days) in which to make the title good and marketable or insurable, and shall use due diligence in doing so.

12.05. **Closing.** At the Closing, Landlord shall deliver the General Warranty Deed to Tenant, Tenant shall deliver the Purchase Price to Landlord, and the parties shall execute such settlement statements and other documents, and shall take such actions, as are customary in commercial real estate transactions in Tupelo, Mississippi. Tenant shall pay for the Title Certificate and any title insurance premiums, the preparation and recording of the General Warranty Deed (which shall be prepared by its attorney), the closing fees (which shall be conducted by Tenant's attorney), and the fees associated with any due diligence investigations conducted by Tenant. Landlord shall be responsible for the costs of any curative work necessary to convey title as described in paragraph 12.04. All other costs and expenses, including those of the parties' own legal counsel, shall be paid by the party incurring them.

SECTION 13 – MISCELLANEOUS

13.01. **Notices.** All notices under this lease shall be in writing and sent by registered or certified mail, postage prepaid, as follows:

To Tenant:

HTG Property Holdings, LLC
 Attention: Geoffrey E. Carter, Manager
 Post Office Box 680, Tupelo, MS 38802
 545 Commerce Street, Tupelo, MS 38804

To Subtenant:

Hyperion Technology Group, Inc.
 Attention: Geoffrey E. Carter, President
 Post Office Box 680, Tupelo, MS 38802
 545 Commerce Street, Tupelo, MS 38804

and

To Landlord:

City of Tupelo
 Attention: Mayor
 P.O. Box 1485
 Tupelo, MS 38802-1485

Either party may change these persons or addresses by giving notice as provided above. Notice shall be considered given and received on the latest original delivery or attempted delivery date as indicated on the postage receipt(s) of all persons and addresses to which notice is to be given.

13.02. **Partial Invalidity.** If any lease provision is invalid or unenforceable to any extent, then that provision shall be deleted and the remainder of this lease shall continue in effect and be enforceable to the fullest extent permitted by law.

13.03. **Waiver.** The failure of either party to exercise any of its rights is not a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

13.04. **Binding on Successors.** This lease shall bind the parties' heirs, successors, representatives, and permitted assigns.

13.05. **Governing Law.** This lease shall be governed by the laws of the State of Mississippi.

13.06. **Survival of Remedies.** The parties' remedies shall survive the ending of this lease when the ending is caused by the default of the other party.

13.07. **Entire Agreement.** This lease contains the entire agreement between the parties concerning the subject matter of this lease. This lease shall be modified only by a writing signed by both parties.

LANDLORD:

TENANT:

CITY OF TUPELO, MISSISSIPPI

HTG PROPERTY HOLDINGS, LLC

By: 
Jason Shelton, Mayor

By: 
Geoffrey C. Carter, Manager

EXHIBIT A

Legal DescriptionTRACT 1

COMMENCING AT PIN FOUND AT NORTHWEST CORNER OF BLOCK 7, PARCEL 1, MIDTOWN URBAN RENEWAL AREA PROJECT NO. MISS R-1 AS RECORDED IN PLAT BOOK 3, PAGE 35 IN THE OFFICE OF THE CHANCERY CLERK, CITY OF TUPELO, LEE COUNTY, MISSISSIPPI; THENCE NORTH 08 DEGREES 02 MINUTES 13 SECONDS EAST 628.53 FEET TO A PIN FOUND ON THE WESTERLY RIGHT-OF WAY LINE OF COMMERCE STREET MARKING THE SOUTHEAST CORNER OF THAT CERTAIN TRACT AS DESCRIBED IN DEED BOOK 1481 AT PAGE 378, SAID POINT BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE NORTH 82 DEGREES 50 MINUTES 04 SECONDS WEST 404.52 FEET TO A PIN FOUND ON THE EASTERLY RIGHT-OF-WAY LINE OF THE KANSAS CITY SOUTHERN RAILROAD; THENCE ALONG SAID LINE, NORTH 08 DEGREES 14 MINUTES 39 SECONDS EAST 801.33 FEET TO A PIN SET; THENCE SOUTH 82 DEGREES 50 MINUTES 04 SECONDS EAST 434.96 FEET TO A PIN SET ON THE OBSERVED WESTERLY RIGHT-OF-WAY LINE OF COMMERCE STREET; THENCE ALONG SAID RIGHT-OF-WAY LINE AS FOLLOWS: SOUTH 12 DEGREES 02 MINUTES 19 SECONDS WEST 65.22 FEET TO A PIN FOUND, SOUTH 12 DEGREES 14 MINUTES 39 SECONDS WEST 104.91 FEET, SOUTH 11 DEGREES 32 MINUTES 08 SECONDS WEST 52.97 FEET, SOUTH 10 DEGREES 24 MINUTES 26 SECONDS WEST 311.29 FEET, SOUTH 09 DEGREES 41 MINUTES 24 SECONDS WEST 107.98 FEET, SOUTH 09 DEGREES 03 MINUTES 38 SECONDS WEST 106.59 FEET, SOUTH 08 DEGREES 24 MINUTES 47 SECONDS WEST 53.94 FEET TO THE POINT OF BEGINNING, CONTAINING 7.63 ACRES, MORE OR LESS, AND ALL BEING PART OF THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 29 AND PART OF THE NORTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 32, ALL OF TOWNSHIP 9 SOUTH, RANGE 6 EAST, LEE COUNTY, MISSISSIPPI.

TRACT 2

COMMENCING AT PIN FOUND AT NORTHWEST CORNER OF BLOCK 7, PARCEL 1, MIDTOWN URBAN RENEWAL AREA PROJECT NO. MISS R-1 AS RECORDED IN PLAT BOOK 3, PAGE 35, IN THE OFFICE OF THE CHANCERY CLERK, CITY OF TUPELO, LEE COUNTY, MISSISSIPPI, THENCE NORTH 08 DEGREES 02 MINUTES 13 SECONDS EAST 628.53 FEET TO A PIN FOUND ON THE WESTERLY RIGHT-OF-WAY LINE OF COMMERCE STREET MARKING THE SOUTHEAST CORNER OF THAT CERTAIN TRACT AS DESCRIBED IN DEED BOOK 1481 AT PAGE 378; THENCE NORTH 82 DEGREES 50 MINUTES 04 SECONDS WEST 404.52 FEET TO A PIN FOUND ON THE EASTERLY RIGHT-OF-WAY LINE OF THE KANSAS CITY SOUTHERN RAILROAD;

THENCE ALONG SAID LINE, NORTH 08 DEGREES 14 MINUTES 39 SECONDS EAST 801.33 FEET TO A PIN SET MARKING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE SOUTH 82 DEGREES 50 MINUTES 04 SECONDS EAST 434.96 FEET TO A PIN SET ON THE OBSERVED WESTERLY RIGHT-OF-WAY LINE OF COMMERCE STREET; THENCE ALONG SAID RIGHT-OF-WAY LINE, NORTH 12 DEGREES 02 MINUTES 19 SECONDS EAST 11.96 FEET; THENCE NORTH 80 DEGREES 38 MINUTES 37 SECONDS WEST 435.76 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF THE KANSAS CITY SOUTHERN RAILROAD; THENCE ALONG SAID LINE, SOUTH 08 DEGREES 14 MINUTES 39 SECONDS WEST 28.58 FEET TO THE POINT OF BEGINNING, CONTAINING 0.20 ACES, MORE OR LESS, AND ALL BEING PART OF THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 29, TOWNSHIP 9 SOUTH, RANGE 6 EAST, LEE COUNTY, MISSISSIPPI.

Together with a perpetual easement for ingress and egress over and across that certain private street more commonly known as Southern Belle Lane;

Together with all and singular the improvements thereon and appurtenances thereunto belonging.



AGENDA REQUEST

TO: Mayor and City Council

FROM: Travis Beard, Council Member

DATE April 28, 2022

SUBJECT: IN THE MATTER OF OPTING OUT OF ALLOWING THE CULTIVATION, PROCESSING, SALE AND/OR DISTRIBUTION OF MEDICAL CANNABIS AND CANNABIS PRODUCTS **TB**

Request:

For your review, discussion and vote.

RESOLUTION

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TUPELO, MISSISSIPPI, OPTING OUT OF THE CULTIVATION, PROCESSING, SALE, AND DISTRIBUTION OF MEDICAL CANNABIS AND CANNABIS PRODUCTS WITHIN THE GEOGRAPHICAL LIMITS OF THE CITY AS AUTHORIZED UNDER THE MISSISSIPPI MEDICAL CANNABIS ACT; AND FOR RELATED PURPOSES.

WHEREAS, the Mississippi Medical Cannabis Act, effective February 2, 2022 (the "Effective Date"), authorizes the cultivation, processing, sale and distribution of medical cannabis and cannabis products in every county and municipality in the State of Mississippi (the "State"); and

WHEREAS, Section 30 the Mississippi Medical Cannabis Act also authorizes and empowers local governments to opt out of the cultivation, processing, sale and/or distribution of medical cannabis and cannabis products, as applicable, within ninety (90) days of the Effective Date; and

WHEREAS, state agencies responsible for the promulgation of regulations will not complete those regulations before the opt out date; and

WHEREAS, by opting out the City Council will be able to monitor the social, economic and financial effects of the cultivation, processing, sale and distribution of medical cannabis and cannabis products in other parts of the State and will be able to opt in at any time in the future pursuant to the provisions of the Mississippi Medical Cannabis Act; and

WHEREAS, it is in the best interest of the citizens of the City for the City Council to opt out of the **CULTIVATION, PROCESSING AND SALE AND DISTRIBUTION** of medical cannabis and cannabis products within the geographical limits of the City; and

WHEREAS, the City Council has provided due notice of this meeting as required by the Mississippi Medical Cannabis Act and said notice complies with Sections 25-41-1 *et seq.*, Mississippi Code of 1972, as amended and/or supplemented from time to time (the "Open Meetings Act"); and

WHEREAS, all conditions, acts and things required by the Mississippi Medical Cannabis Act, Open Meetings Act and the Constitution and laws of the State to have existed, to have happened and to have been performed precedent to and in connection with the adoption of this resolution (the "Resolution"), have happened and have been performed in regular and due time, form and manner as required by law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUPELO, MISSISSIPPI, ACTING FOR AND ON BEHALF OF THE CITY, AS FOLLOWS:

SECTION 1. All statements, findings and determinations set forth in the above and foregoing recitations are hereby declared to be true and correct and are incorporated herein as facts.

SECTION 2. The City Council hereby opts out of the **CULTIVATION, PROCESSING** and **SALE AND DISTRIBUTION** of medical cannabis and cannabis products within the geographical limits of the City.

SECTION 3. The City Council, acting for and on behalf of the City, hereby reserves the right to opt in at any time in the future and allow the **CULTIVATION, PROCESSING** or **SALE AND DISTRIBUTION** of medical cannabis and cannabis products within the geographical limits of the City upon a vote of the City Council or upon an election of qualified electors duly held in accordance with the Mississippi Medical Cannabis Act.

SECTION 4. If any one or more of the provisions of this Resolution shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any of the other provisions of this Resolution, but this Resolution shall be construed and enforced as if such illegal or invalid provision or provisions had not been contained herein.

SECTION 5. This Resolution shall be in effect immediately upon its passage and enactment according to law, or at the earliest date of effect under law, and shall be spread upon the minutes of the City Council of the City of Tupelo.

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

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

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

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

CITY OF TUPELO, MISSISSIPPI

By: _____
BUDDY PALMER
City 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 DDS
DATE MAY 3, 2022
SUBJECT: IN THE MATTER OF LOT MOWING TN

Request:

PLEASE REVIEW AND APPROVE

Preliminary Lot Mowing Report for 5/3/2022

Item # 8.

	Violation Ref	Parcel	Location	Owner	Owner Address	Owner City State Zip	Inspector
1.	40364	077M3605701	1100 CHAPMAN DR	DAVIDSON STEPHANIE	4360 SOUTHERN AVE SE	WASHINGTON, DC 20019	
2.	40365	077M3605900	1104 CHAPMAN DR	MALDONADO JOSE & JESSICA CRUZ	1105 LAWNSDALE STREET	TUPELO, MS 38801	SB
3.	40366	089F3010601	523 N CHURCH ST	CABRAL SENOVIA	2512 PATTERSON DR	TUPELO, MS 338804	SB
4.	40367	089F3010501	527 N CHURCH ST	CABRAL SENOVIA	2512 PATTERSON DR	TUPELO, MS 338804	SB
5.	40368	089F3012500	571 N CHURCH ST	HICKS ARMENTRA HAYES	8239 SOUTH CARPENTER ST	CHICAGO, IL 60620	SB
6.	40369	089F3016100	572 N CHURCH ST	AGNEW FRANK	201 W DOZIER ST	TUPELO, MS 38804	SB
7.	40370	089F3013000	605 N CHURCH ST UNIT A & B	NE MS HABITAT FOR HUMANITY INC	P O BOX 7321	TUPELO, MS 38802	SB
8.	40371	089F3013600	632 N CHURCH ST	CARRUTH NELLIE	632 N CHURCH	TUPELO, MS 38804	SB
9.	40374	089F3013200	N CHURCH ST	MAYHORN MICHAEL U	3612-B GRACE LN	TUPELO, MS 38804	SB
10	40377	089F3010301	704 N MADISON ST	FOSTER ROBERT M & STEPHANIE G	704 N MADISON	TUPELO, MS 38804	SB
11	40379	089F3013300	431 TOLBERT ST	GALE CONSTRUCTION LLC	124 DRIVE 204	GUNTOWN, MS 38849	SB

Preliminary Lot Mowing Report for 5/3/2022

Item # 8.

	Violation Ref	Parcel	Location	Owner	Owner Address	Owner City State Zip	Inspector
12	40382	077F2617900	709 LAR-ELI-DO DR	PAYNE THOMAS JR	113 WAYSIDE	TUPELO, MS 38804	JLS
13	40383	077J3506600	300 BATTLEFIELD DR	GENE TAYLOR CONSTRUCTION CO INC	2477 AMELIA LANE	TUPELO, MS 38801	JLS
14	40384	077J3508400	2033 BRIARFIELD DR	GENE TAYLOR CONSTRUCTION CO INC	2477 AMELIA LANE	TUPELO, MS 38801	JLS
15	40385	077J3508100	2069 BRIARFIELD DR	GENE TAYLOR CONSTRUCTION CO INC	2477 AMELIA LANE	TUPELO, MS 38801	JLS
16	40386	077J3507500	301 SAGEFIELD DR	GENE TAYLOR CONSTRUCTION CO INC	2477 AMELIA LANE	TUPELO, MS 38801	JLS
17	40387	089F3008900	420 TOLBERT ST	PROVIDENTIAL PROPERTIES, LLC	483 AIR PORT RD	NATCHEZ, MS 39120	SB
18	40388	089F3009000	422 TOLBERT ST	SEARCY TAYLOR ETAL	15310 HAMILTON ST.	GULFPORT, MS 39503	SB
19	40389	089F3009100	424 TOLBERT ST	J JAY PROPERTY	484 FURRS RD	TUPELO, MS 38801	SB
20	40390	101B0219500	2607 BRYAN ST	SHARP JULIA PRENEICE LOWER	205 DOE RUN RD	TUPELO, MS 38801	RS
21	40391	089F3006000	520 WALKER ST	GARDNER WILLIAM	206 E REA ST	TUPELO, MS 38804	SB
22	40392	101B0219600	2609 BRYAN ST UNIT A & B	POUNDERS ROY MITCHELL	356 CR 7000	BOONEVILLE, MS 38829	RS
23	40393	089F3005300	525 W BARNES ST	HEARTLAND PROPERTIES LLC	1336 PALMETTO	TUPELO, MS 38801	SB

Preliminary Lot Mowing Report for 5/3/2022

Item # 8.

	Violation Ref	Parcel	Location	Owner	Owner Address	Owner City State Zip	Inspector
24	40394	101B0221100	2400 CRESTWOOD CIR	KEY CHARLENE G	2400 CRESTWOOD CIRC	TUPELO, MS 38801	RS
25	40395	089F3005700	810 N MADISON ST	EZELL LEKESHA SHUNTAE	810 NORTH MADISON	TUPELO, MS 38804	SB
26	40397	101B0224700	2317 ENGLEWOOD DR	JOHNSON OLLIE M	2317 ENGLEWOOD DR	TUPELO, MS 38801	RS
27	40399	089E3018400	805 N MADISON ST	FIELDER ARTHUR Jafa JR & ROWENA	5203 GOLF VALLEY WAY	STONE MTN, GA 20033	SB
28	40400	101B0224600	2315 ENGLEWOOD DR	MORRIS MICHAEL SCOTT & MICHAELA G	2315 ENGLEWOOD	TUPELO, MS 38801	RS
29	40403	089F3005500	539 W BARNES ST	CLARK JO ANN	545 WILLOWRIDGE WAY	AVONDALE ESTATES, GA 30002	SB
30	40404	089F3005600	536 WALKER ST	SANDERS SHEILA	2512 SOUTH GLOSTER	TUPELO, MS 38801	SB
31	40405	077P3521500	2308 MILLSAP ST	TWIN PROPERTIES LLC	1223 NELLE STREET	TUPELO, MS 38804	RS
32	40406	077P3512700	602 MAYNARD DR	JOEY SPEARMAN RENTALS LLC	173 CR 13	TUPELO, MS 38801	RS
33	40407	077J3506900	331 BATTLEFIELD DR	GENE TAYLOR CONSTRUCTION CO INC	2477 AMELIA LANE	TUPELO, MS 38801	JLS
34	40409	077J3506700	309 BATTLEFIELD DR	GENE TAYLOR CONSTRUCTION CO INC	2477 AMELIA LANE	TUPELO, MS 38801	JLS

Preliminary Lot Mowing Report for 5/3/2022

Item # 8.

	Violation Ref	Parcel	Location	Owner	Owner Address	Owner City State Zip	Inspector
35	40410	077J3507000	343 BATTLEFIELD DR	KRAUSS KIM LOONAN	604 SMOKEY MOUNTAIN DR	TUPELO, MS 38801	JLS
36	40411	101B0208300	607 MAYNARD DR	TUPELO RENTAL PROPERTIES LLC	1879 N COLEY RD	TUPELO, MS 38801	RS
37	40412	101B0208700	615 MAYNARD DR	HEAVENER NADA E	615 MAYNARD	TUPELO, MS 38801	RS
38	40415	101B0210200	616 MAYNARD DR	SIMMONS JAMES W JR & APRIL	616 MAYNARD DR	TUPELO, MS 38801	RS
39	40416	089F3005000	517 W BARNES ST	ROBINSON ANGELA	146 12TH STREET	RICHMOND, CA 94801	SB
40	40423	101U1103900	2612 CAMELLA CV	SPRING LAKE LLC	PO BOX 2066	TUPELO, MS 38803	JLS
41	40424	101U1104100	2627 CAMELLIA CV	GENE TAYLOR CONSTRUCTION CO INC	2477 AMELIA LANE	TUPELO, MS 38801	JLS
42	40425	101U1100100	S THOMAS ST	SPRING LAKE LLC	PO BOX 2066	TUPELO, MS 38803	JLS
43	40426	113E0613400	902 S GLOSTER ST	WALGREEN CO	104 WILMOT RD MS# 1420	DEERFIELD, IL 60015	RS
44	40427	113E0611900	910 RIDGECREST DR	EMERSON CYNTHIA HALE	771 HALE DR	TUPELO, MS 38801	RS
45	40428	113E0609100	715 GARFIELD ST	PHARMACY INNOVATIONS REAL ESTATE HOLDING	186 MEDICAL DR	WINFIELD, AL 35594	RS
46	40429	077Q3617900	1701 W MAIN ST	SRB MCGRATH LLC	622 ALLEN ST	TUPELO, MS 38801	RS

Preliminary Lot Mowing Report for 5/3/2022

Item # 8.

	Violation Ref	Parcel	Location	Owner	Owner Address	Owner City State Zip	Inspector
47	40431	075S1600102	3424 WALSH RD	WILLIAMS JIMMIE ESTATE	P O BOX 184	BELDEN, MS 38826	SB
48							
49							
50							
51							
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55							
56							
57							
58							



AGENDA REQUEST

TO: Mayor and City Council

FROM: Dennis Bonds, City Engineer

DATE: April 28, 2022

SUBJECT: IN THE MATTER OF RESOLUTION OF THE TUPELO CITY COUNCIL REQUESTING THREE RIVERS SOLID WASTE MANAGEMENT AUTHORITY AMEND ITS CURRENT SOLID WASTE MANAGEMENT PLAN FOR A PROPOSED EXPANSION OF THE WONDURA CLASS II RUBBISH LANDFILL.

Request:

Approval of attached resolution.

**RESOLUTION OF THE TUPELO, MISSISSIPPI CITY COUNCIL
REQUESTING THREE RIVERS SOLID WASTE MANAGEMENT AUTHORITY
AMEND ITS CURRENT SOLID WASTE MANAGEMENT PLAN FOR A PROPOSED
EXPANSION OF THE WONDURA CLASS II RUBBISH LANDFILL IN THE CITY
TUPELO, LEE COUNTY, MISSISSIPPI**

WHEREAS, the City of Tupelo is a member of the Three Rivers Solid Waste Management Authority (TRSWMA); and

WHEREAS, in regard to the expansion of the Tupelo Class II Rubbish Landfill, TRSWMA is required by the Mississippi Department of Environmental Quality (MDEQ) to amend its Solid Waste Management Plan to include the proposed facility expansion;

NOW, THEREFORE, BE IT RESOLVED, that Tupelo, Mississippi, acting by and through its City Council, is hereby authorized to undertake the following procedures with all costs incurred to be paid by the City of Tupelo:

(1) To submit its Applicant Request Form For Amendment to the Local Solid Waste Management Plan to TRSWMA as it relates to the proposed expansion, a copy of which is attached hereto as Exhibit A and is incorporated herein by reference;

(2) To undertake all necessary requirements to ensure that the modifications to the Solid Waste Management Plan are approved by TRSWMA in order to effectuate this facility expansion;

(3) Thereafter, to undertake all necessary steps to ensure that the modification to the Solid Waste Management Plan is approved by MDEQ.

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

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

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

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

CITY OF TUPELO, MISSISSIPPI

By: _____
BUDDY PALMER
City Council President

ATTEST:

MISSY SHELTON
Clerk of the Council

APPROVED:

TODD JORDAN, Mayor

DATE



AGENDA REQUEST

TO: Mayor and City Council
FROM: Dennis Bonds, City Engineer
DATE April 28, 2022
SUBJECT: IN THE MATTER OF RESOLUTION REGARDING THE EMERGENCY ROAD & BRIDGE REPAIR FUND PROGRAM **DRB**

Request: DRB

Applications for Projects are due May 8, 2022. A list of projects to request funding is being prepared and will be submitted to MDOT prior to the deadline.

RESOLUTION

**RESOLUTION OF CITY COUNCIL OF THE CITY OF TUPELO, MISSISSIPPI,
AUTHORIZING SUBMISSION OF APPLICATION FOR MISSISSIPPI DEPARTMENT
OF TRANSPORTATION (MDOT) EMERGENCY ROAD AND BRIDGE REPAIR FUND
(ERBRF)**

WHEREAS, the Mississippi Department of Transportation (MDOT) is soliciting projects for the Emergency Road and Bridge Repair Fund (ERBRF) Program for emergency repairs to public roads and bridges in the state, and

WHEREAS, City of Tupelo, Mississippi, desires to submit an application for [*insert identified eligible project descriptions*]; and

WHEREAS, City of Tupelo, Mississippi, acknowledges that if the projects are awarded, grant funding will not exceed the amount requested in the application or eligible project costs, whichever is less.

NOW, THEREFORE, BE IT RESOLVED, that City Council of the City of Tupelo, Mississippi, authorizes the identification of projects by the City Engineer and Consulting Engineers for subsequent approval by this City Council, the preparation and submission of applications for the Emergency Road and Bridge Repair Fund Program and the execution of such grants and/or related documents required for commencement of the project.

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

- Councilmember Mims voted _____
- Councilmember L. Bryan voted _____
- Councilmember Beard voted _____
- Councilmember Davis voted _____
- Councilmember Palmer voted _____
- Councilmember Gaston voted _____
- Councilmember Jones voted _____

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

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

CITY OF TUPELO, MISSISSIPPI

By: _____
BUDDY PALMER
City Council President

ATTEST:

MISSY SHELTON
Clerk of the Council

APPROVED:

TODD JORDAN, Mayor

DATE



AGENDA REQUEST

TO: Mayor and City Council
FROM: John Quaka , Chief of Police
DATE April 29th, 2022
SUBJECT: IN THE MATTER OF NMNU REQUEST FOR DECLARATION OF
SURPLUS NMNU VEHICLES FOR AUCTION, JQ

Request:

Please review list of NMNU seized vehicles for auction and Resolution

Attachments:

NMNU Auction Vehicles 2022
Resolution – Declaration of Surplus

Resolution

Declaration of Surplus

Whereas, the Tupelo Police Department (host agency for the North Mississippi Narcotics Unit) has in its possession exhibit A. Exhibit A is a list of vehicles seized and forfeited to the NMNU and/or City of Tupelo.

Whereas, the list items have not been used for some time, and if the items are in working order, they have no value or useful life remaining to the unit.

Whereas, the NMNU control board has determined the listed items to be surplus to the unit and authorizes the sale at a public auction, or destruction where sale is not practical (i.e. intelligence gathering equipment).

It is hereby requested that the City of Tupelo Council declare the attached Exhibit A surplus to the City of Tupelo and that the Council authorize the disposal of said items in accordance with state statutes.

Chief John Quaka
Tupelo Police Department

Upon motion by Councilman _____, and seconded by Councilman _____ the matter was called to a vote by the President with the Councilmen voting as follows:

- Councilperson Mims _____
- Councilperson Bryan _____
- Councilperson Beard _____
- Councilperson Davis _____
- Councilperson Palmer _____
- Councilperson Gaston _____
- Councilperson Jones _____

Whereupon, the request having received a majority of the affirmative votes, the President of the Council declares that the attached listed items are surplus to the City of Tupelo, Tupelo Police Department and directs that said items be sold at Public Auction in compliance with the directives issued by the State of Mississippi, on the ____ day of _____, 2022.

City of Tupelo, Mississippi

Buddy Palmer , President

Attest: Missy Shelton, Clerk of the Council

NMNU Auction List May 2022

1.	2012	Maroon	Nissan	Altima	1N4AL2AP8CN473029
2.	2003	White	Nissan	Pathfinder	JN8DR09X63W701154
3.	2008	Gray	Nissan	Altima	1N4AL21E88N455443
4.	2008	Tan	Cadillac	DTS	1G6KD57Y08U183574
5.	2012	Black	Infinity	G37	JN1CV6EK2CM421259
6.	1999	Maroon	GMC	Yukon	1GKEC13R0XJ708304
7.	1994	Red	Chevrolet	Blazer	1GNEK18K9RJ440583
8.	2013	Blue	Polaris	RZR	4XAVH7EA8DF669846
9.	2004	Black	Ford	F150	1FTPX14534NC47754



AGENDA REQUEST

TO: Mayor and City Council
FROM: Chuck Williams, Public Works
DATE: April 28, 2022
SUBJECT: IN THE MATTER OF BID APPROVAL COURT ST DOWNTOWN PARKING LOT IMPROVMENTS 2022-012PW - CW

Request:

Request for Bid Approval for the Court St Downtown Parking Lot Improvements – 2022-012PW

Four bidders responded. We propose the project be awarded to the lowest bidder Gregory Companies, LLC DBA Murphree Paving



April 28, 2022

Mr. Neal McCoy
71 Troy St.
Tupelo, Mississippi 38804

REFERENCE: RECOMMENDATION OF AWARD OF CONTRACT
COURT ST. DOWNTOWN PARKING LOT IMPROVEMENTS
BID NO. 2022-012PW

Dear Mr. McCoy:

I am pleased to submit to you, along with the Mayor and City Council, our conclusions and recommendations regarding the award of the construction contract for the referenced project. Bids were opened at Tupelo City Hall on Thursday, April 28, 2022 at 10:00 AM local time.

This project includes the installation of new concrete pavement, fencing, dumpster enclosure and other related improvements as required to facilitate the overall project improvements mandated by the City. Four bids were received for this project that ranged from \$375,716.00 - \$521,902.00 per the submitted bid forms submitted by Gregory Companies / DBA Murphree Paving, Timbo's Construction, Phillips Contracting and Century Construction. The low bid was from Gregory Companies, LLC / DBA Murphree Paving in the amount of \$375,716.00.

The proposal documentation provided by Gregory Companies, LLC appears to meet the requirements of the Contract Documents. Thus, it is our recommendation that the City award this contract in the amount of \$375,716.00 to Gregory Companies, LLC / DBA Murphree Paving and authorize the Mayor to execute said contract for the referenced project.

We appreciate the opportunity to be of service to you and to be involved with this project. Please let us know should have any questions or require additional information.

Sincerely,
DABBS CORPORATION

Dustin D. Dabbs, PE
President

- C: Mr. Don Lewis, COO, City of Tupelo
- Ms. Kim Hanna, CFO, City of Tupelo
- Mr. Ben Logan, City Attorney, City of Tupelo
- Mr. Chuck Williams, Public Works Director, City of Tupelo
- Mr. Dennis Bonds, PE, City Engineer, City of Tupelo

[@dabbscorp](#)

OFFICE 662.840.4162

1005 N. Eason Boulevard

MOBILE 601.927.4012

Tupelo, MS 38804

BID# 2022-012PW COURT STREET DOWNTOWN PARKING LOT IMPROVEMENT

Name	CR	Ins	Signed	ADD	Bid Amount
Century Construction	18118-mc	Travelers of America	vice-pres	NO	521 902. ⁰⁰ / _{xx}
Phillips Contracting	00229-mc	Fidelity & Deposit Maryland	president	NO	474 281. ⁰⁰ / _{xx}
Gregory Companies	221201-mc	Atlantic Speciality	president	NO	378 182. ⁰⁰ / _{xx}
Tim	12475-mc	Gray Co	president	NO	402 156. ⁰⁰ / _{xx}

BID TABULATION - BID NO. 2022-012 PW
CITY OF TUPELO, MISSISSIPPI
COURT ST. DOWNTOWN PARKING LOT IMPROVEMENTS
BID DATE: 04/28/2022



ITEM NO.	DESCRIPTION	UNIT	QNTY.	MURPHREE. PAVING		TIMBO'S CONSTRUCTION		PHILLIPS CONTRACTING		CENTURY CONSTRUCTION	
				UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
1	MOBILIZATION	LS	1	5,500.00	\$ 5,500.00	10,600.00	\$ 10,600.00	25,000.00	\$ 25,000.00	52,000.00	\$ 52,000.00
2	EXCESS EXCAVATION	CY	30	191.60	\$ 5,748.00	69.96	\$ 2,098.80	22.00	\$ 660.00	75.00	\$ 2,250.00
3	BORROW EXCAVATION	CY	300	55.00	\$ 16,500.00	18.55	\$ 5,565.00	35.00	\$ 10,500.00	28.00	\$ 8,400.00
4	TOPSOIL / SOIL CONDITIONER	CY	20	147.80	\$ 2,956.00	63.60	\$ 1,272.00	35.00	\$ 700.00	93.00	\$ 1,860.00
5	CRUSHED STONE BASE COURSE	CY	550	87.12	\$ 47,916.00	84.80	\$ 46,640.00	97.00	\$ 53,350.00	93.00	\$ 51,150.00
6	CONCRETE PAVEMENT, LIGHT DUTY	SY	3,010	67.90	\$ 204,379.00	75.72	\$ 227,917.20	80.00	\$ 240,800.00	77.50	\$ 233,275.00
7	CONCRETE JOINT INSTALLATION	LF	1,000	5.05	\$ 5,050.00	4.45	\$ 4,450.00	4.50	\$ 4,500.00	9.50	\$ 9,500.00
8	6" CONCRETE HEADER CURB	LF	900	27.40	\$ 24,660.00	21.20	\$ 19,080.00	26.50	\$ 23,850.00	48.00	\$ 43,200.00
9	RECTANGULAR CONCRETE HEADER, Match Existing	LF	120	24.10	\$ 2,892.00	21.20	\$ 2,544.00	26.50	\$ 3,180.00	77.00	\$ 9,240.00
10	CONCRETE, CLASS B	CY	6	220.00	\$ 1,320.00	861.25	\$ 5,167.50	2,000.00	\$ 12,000.00	2,060.00	\$ 12,360.00
11	BRICK MASONRY FENCE PILASTERS	EA	8	1,225.00	\$ 9,800.00	2,451.25	\$ 19,610.00	5,000.00	\$ 40,000.00	2,500.00	\$ 20,000.00
12	FABRICATED METAL FENCE	LF	112	150.00	\$ 16,800.00	160.90	\$ 18,020.58	210.00	\$ 23,520.00	200.00	\$ 22,400.00
13	RELOCATED STEEL FENCE	LF	8	70.00	\$ 560.00	160.86	\$ 1,286.88	10.00	\$ 80.00	190.00	\$ 1,520.00
14	DUMPSTER ENCLOSURE WITH GATE, PER PLANS	LS	1	20,200.00	\$ 20,200.00	27,560.00	\$ 27,560.00	22,000.00	\$ 22,000.00	26,000.00	\$ 26,000.00
15	4' PAINTED TRAFFIC STRIPE, CONTINUOUS YELLOW	LF	1500	2.00	\$ 3,000.00	0.90	\$ 1,350.00	1.10	\$ 1,650.00	1.00	\$ 1,500.00
16	4' PAINTED TRAFFIC STRIPE, CONTINUOUS H.C. BLUE	LF	310	2.00	\$ 620.00	0.90	\$ 279.00	1.10	\$ 341.00	1.00	\$ 310.00
17	PAINTED TRAFFIC SYMBOL, YELLOW LEGEND	SF	110	1.50	\$ 165.00	12.72	\$ 1,399.20	15.00	\$ 1,650.00	13.50	\$ 1,485.00
18	STD. ADA H.C. PARKING SYMBOL, H.C. BLUE PAINT	EA	4	100.00	\$ 400.00	106.00	\$ 424.00	125.00	\$ 500.00	113.00	\$ 452.00
19	TEMPORARY TRAFFIC CONTROL	LS	1	2,500.00	\$ 2,500.00	1,590.00	\$ 1,590.00	5,000.00	\$ 5,000.00	10,000.00	\$ 10,000.00
20	TEMPORARY EROSION CONTROL	LS	1	4,750.00	\$ 4,750.00	5,300.00	\$ 5,300.00	5,000.00	\$ 5,000.00	15,000.00	\$ 15,000.00
GRAND TOTAL				\$ 375,716.00	\$ 402,154.16	\$ 474,281.00	\$ 521,902.00				

\$0.00 Denotes Corrected Line Item Amount
\$0.00 Denotes Corrected Total Bid Amount

PROPOSAL

Proposal of Gregory Companies LLC, dba Murphy Paving (hereinafter called "BIDDER"), organized and existing under the laws of the State of Mississippi doing business as a (corporation, partnership, limited liability company, or individual) to **TUPELO, MS**, (hereinafter called "OWNER"). In compliance with your advertisement for Bids, BIDDER, hereby proposes to perform all WORK for construction of

"COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS"

in strict accordance with the CONTRACT DOCUMENTS, within the time set forth herein, and at the prices stated below. By submission of the BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been developed independently, without consultation, communication or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in a written "NOTICE TO PROCEED" and to fully complete the Project within 30 consecutive calendar days thereafter. BIDDER further agrees to pay as liquidated damages, the sum of \$300 for each consecutive calendar day thereafter as provided for elsewhere in these CONTRACT DOCUMENTS.

BIDDER ACKNOWLEDGES receipt of the following ADDENDA:

NUMBER: N/A DATE: N/A
NUMBER: _____ DATE: _____
NUMBER: _____ DATE: _____
NUMBER: _____ DATE: _____

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to this bid.

BIDDER understands that the quantities mentioned below are approximate only and are subject to either increase or decrease, and hereby proposes to perform any increased or decreased quantities of work at the Unit Price Bid.

In accordance with the requirements of the Plans, Specifications and Contract Documents, BIDDER proposes to furnish all necessary materials, equipment, labor, tools and other means of construction and to construct the Project in accordance with the Contract Documents within the specified Contract Time for the following Unit Prices specified.

BIDDER further agrees to execute the contract agreement as bound herein within ten (10) days after receipt of contract forms from the OWNER.

BIDDER agrees to pay as liquidated damages the amount provided herein for each consecutive calendar day after the Contract completion date specified in a written "NOTICE TO PROCEED" that he fails to complete the work unless the Contract Time is extended by a written Change Order.

BIDDER also proposes to execute a Performance Bond and a Payment Bond, as shown in the Specifications, each in an amount of not less than **one hundred percent (100%)** of the total of the Base Bid. These Bonds shall not only serve to guarantee the completion of the work on the BIDDERS part, but also to guarantee the excellence of both workmanship and materials until the work is finally accepted.

BIDDER encloses a Bid Bond or Certified Check for 5% of Base Bid Amount DOLLARS (\$ 18,909.10) and hereby agree that in case of failure to execute the Contract and furnish the required Bonds within (10) days after the Receipt of Contract Forms, the amount of this Certified Check or Bid Bond will be forfeited to the OWNER, as liquidated damages arising out of his failure to execute the Contract as proposed.

It is understood that in case BIDDER is awarded the work, the Certified Check or Bid Bond submitted as Bid security will be returned as stipulated in the Specifications.

Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provision of the Equal Opportunity Clause set forth in the Federal Requirements, if applicable.

The low BIDDER shall supply the names and address of major MATERIAL SUPPLIERS AND SUBCONTRACTORS when required to do so by the OWNER.

Inspection trips for prospective BIDDERS will be coordinated thru OWNER prior to submission of proposal.

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices or base bid amount: **SEE PAGE D-4 FOR BID ITEMS.**

NOTES:

1. Unit price amounts are to be shown in figures where indicated. Where a discrepancy in the unit price and the extension of any items occurs, the unit price will govern.
2. Unit prices shall include all labor, materials, bonding, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.
3. Any erasure, change or alteration of any kind must be initialed by the BIDDER.
4. Bid prices shall include sales tax and all other applicable taxes and fees.
5. Any item of work not specified on the Proposal as a separate pay item or indicated as an absorbed cost in a pay item but which is incidental to completion of the work shall be considered as an absorbed cost with full compensation included in the unit price bid for the particular item involved.
6. OWNER reserves the right to award any combination of base and additive alternate bids (if any) it deems advantageous and in the event that all specified bid item units are lump sum (LS), the OWNER reserves the right to delete any such item or combination of such items from the project. The OWNER further reserves the right to delete any item or items desired from the Bid Schedule after the Contract has been awarded. Any deletions, if any made, shall be by Change Order and BIDDER hereby agrees to accept such Change Orders.

SECTION D: BID FORM - BID NO. 2022-012PW
CITY OF TUPELO, MISSISSIPPI
ROADWAY SURFACE TREATMENT IMPROVEMENTS
FEBRUARY, 2022

ITEM NO.	DESCRIPTION	UNIT	QNTY.	UNIT COST	TOTAL COST
1	MOBILIZATION	LS	1	\$5,500.00	\$5,500.00
2	EXCESS EXCAVATION	CY	30	\$191.60	\$5,748.00
3	BORROW EXCAVATION	CY	300	\$55.00	\$16,500.00
4	TOPSOIL / SOIL CONDITIONER	CY	20	\$147.80	\$2,956.00
5	CRUSHED STONE BASE COURSE	CY	550	\$87.12	\$47,916.00
6	CONCRETE PAVEMENT, LIGHT DUTY	SY	3,010	\$67.90	\$204,379.00
7	CONCRETE JOINT INSTALLATION	LF	1,000	\$5.05	\$5,050.00
8	6" CONCRETE HEADER CURB	LF	900	\$27.40	\$27,126.00
9	RECTANGULAR CONCRETE HEADER, Match Existing	LF	120	\$24.10	\$2,892.00
10	CONCRETE, CLASS B	CY	6	\$220.00	\$1,320.00
11	BRICK MASONRY FENCE PILASTERS	EA	8	\$1225.00	\$9,800.00
12	FABRICATED METAL FENCE	LF	112	\$150.00	\$16,800.00
13	RELOCATED STEEL FENCE	LF	8	\$70.00	\$560.00
14	DUMPSTER ENCLOSURE WITH GATE, PER PLANS	LS	1	\$20,200.00	\$20,200.00
15	4' PAINTED TRAFFIC STRIPE, CONTINOUS YELLOW	LF	1500	\$2.00	\$3,000.00
16	4' PAINTED TRAFFIC STRIPE, CONTINOUS H.C. BLUE	LF	310	\$2.00	\$620.00
17	PAINTED TRAFFIC SYMBOL, YELLOW LEGEND	SF	110	\$1.50	\$165.00
18	STD. ADA H.C. PARKING SYMBOL, H.C. BLUE PAINT	EA	4	\$100.00	\$400.00
19	TEMPORARY TRAFFIC CONTROL	LS	1	\$2,500.00	\$2,500.00
20	TEMPORARY EROSION CONTROL	LS	1	\$4,750.00	\$4,750.00
GRAND TOTAL					\$378,182.00

SECTION D: BID FORM - BID NO. 2022-012PW
CITY OF TUPELO, MISSISSIPPI
ROADWAY SURFACE TREATMENT IMPROVEMENTS
FEBRUARY, 2022

IN ACCORDANCE WITH THE PUBLISHED BID NOTICE AND THE CONTRACT DOCUMENTS PROVIDED BY THE CITY FOR THE REFERENCED BID, THE UNDERSIGNED DOES HEREBY AGREE TO FURNISH THE DEFINED MATERIALS, SUPPLIES AND SERVICES TO THE CITY OF TUPELO, MISSISSIPPI FOR THE PRICES AS SPECIFIED HEREIN. BIDDER AGREES TO SPECIFIED PRICES TO BE PROVIDED TO THE CITY UNTIL THE CLOSEOUT OF THE PROJECT.

RESPECTFULLY SUBMITTED BY: Gregory Companies Llc, dba Murphy Paving
(PLEASE PRINT)

SIGNATURE: 

NAME AND TITLE: Robert Moore - President (SEAL)
(PLEASE PRINT) IF BY CORPORATION

ADDRESS: 1138 D.L. Collyers Drive
Tupelo, MS 38801

PHONE NUMBER: 662-844-2331

D-4b

CORPORATE CERTIFICATE

(To be executed if BIDDER is a Corporation)

I, _____ certify that I am the Secretary of the Corporation named as CONTRACTOR in the foregoing Proposal; that _____ who signed said Proposal on behalf of the CONTRACTOR, was then _____ of said Corporation; that said Proposal was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

Name: _____

Title: _____

Signature: _____

Date: _____

(CORPORATE SEAL)

PARTNERSHIP CERTIFICATE

(To be executed if BIDDER is a Partnership)

STATE OF _____

COUNTY OF _____

On this ____ day of _____, 2022, before me personally appeared _____, known to be and known by me to be the person who executed the above instrument, who being by me first duly sworn, did depose and say that he is general partner in the firm of:

_____; That said firm consists of himself and ; and that he executed the foregoing instrument for and on behalf of said firm for the uses and purposes stated herein.

Signature _____

Title _____

(SEAL)

Sworn before me this __ day of _____, 2022.

_____, Notary Public

My commission expires _____

LIMITED LIABILITY COMPANY CERTIFICATE

(To be executed if BIDDER is a LLC)

I, the undersigned Robert Moore, hereby certify that I am the Manager of Gregory Companies LLC (the "Company") or if the Company does not have a Manager, a Member of the Company with full power and authority to bind the Company; that Robert Moore who executed the Proposal on behalf of the Company is president of the Company with full power and authority to execute same on behalf of the Company, and that the Proposal and the Contract, if awarded to the Company, are within the powers and authority of the Company.

Signature RT AM

Title President

(SEAL)
Sworn before me this 21st day of April, 2022.

Rebecca Hayes, Notary Public

My commission expires Jan. 12, 2025



NONRESIDENT BIDDER CERTIFICATE
(to be executed if a BIDDER is a nonresident)

I, _____, hereby certify that the CONTRACTOR,
_____, is domiciled in the State of _____
and (check and complete one):

() attached is a copy of the State of _____'s current law pertaining to the
treatment of nonresident CONTRACTORS. Paragraph _____, page _____ of said law grants
resident CONTRACTORS a _____ percent preference over nonresident CONTRACTORS for
similar projects.

() the State of _____ has no current law pertaining to the treatment of
nonresident contractors.

() I claim "resident contractor" status based upon having been qualified to do business in this
state and having maintained a permanent full-time office in the State of Mississippi for two
(2) years prior to January 1, 1986. Proof of such claim must be submitted and approved
before contract is signed.

Signature _____

Title _____

(SEAL)
Sworn before me this ___ day of _____, 2022.

_____, Notary Public

My commission expires _____

NON-COLLUSION AFFIDAVIT
(TO BE EXECUTED IN DUPLICATE)

STATE OF MISSISSIPPI
COUNTY OF Lee

I, Robert Moore
(name of person signing affidavit)

individually, and in my capacity as president
(title)

of Gregory Companies LLC, dba Murphy Paving
(name of firm, partnership, limited liability company, or corporation.)

being duly sworn, on oath do depose and say as follows:

(a) That Gregory Companies LLC, dba Murphy Paving, Bidder on the "COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS" for Tupelo, MS, has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

Signature [Handwritten Signature]

Title president

(SEAL)
Sworn before me this 27th day of April, 2022.

Rebecca Hayes, Notary Public
My commission expires Jan. 12, 2025



NOTE: FAILURE TO PROPERLY SIGN AND NOTARIZE THIS AFFIDAVIT WILL DISQUALIFY THE BID.

NON-COLLUSION AFFIDAVIT
(TO BE EXECUTED IN DUPLICATE)

STATE OF MISSISSIPPI
COUNTY OF Lee

I, Robert Moore
(name of person signing affidavit)

individually, and in my capacity as president
(title)

of Gregory Companies LLC, dba Murphy's Paving
(name of firm, partnership, limited liability company, or corporation.)

being duly sworn, on oath do depose and say as follows:

(a) That Gregory Companies LLC, dba Murphy's Paving, Bidder on the "COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS" for Tupelo, MS has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

Signature Robert Moore

Title president

(SEAL)
Sworn before me this 29th day of April, 2022.

Rebecca Hayes, Notary Public

My commission expires Jan. 12, 2025



NOTE: FAILURE TO PROPERLY SIGN AND NOTARIZE THIS AFFIDAVIT WILL DISQUALIFY THE BID.

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That Gregory Companies, LLC dba Murphree Paving
(Name of Contractor)

1138 D L Collums Drive Tupelo , MS 38801
(Address of Contractor)

a Limited Liability Company hereinafter called "Principal", and
(Corporation, Partnership, Limited Liability Company or Individual)

Atlantic Specialty Insurance Company hereinafter called
(Name of Surety) "Surety",

are held and firmly bound unto **TUPELO, MS**, hereinafter called "**OWNER**" in the penal sum of 5% of Total Bid, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents. Signed, this the 26th day of **April** 2022. The Condition of the above obligation is such that whereas the Principal has submitted to the **CITY OF TUPELO, MS** a certain BID, attached hereto and hereby made a part thereof to enter into a contract in writing, for the construction of:

"COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS"

NOW, THEREFORE,

- (a) If said BID shall be rejected, or,
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract on the Contract form as attached hereto (properly completed in accordance with said BID) and shall furnish BONDS for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection herewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void, otherwise the same shall remain in effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these present to be signed by their officers, the day and year first set forth above.

Gregory Companies, LLC dba Murphree Paving (L.S.)
Principal

Atlantic Specialty Insurance Company
Surety


By: *Robert Moore, president*


By: Stephen A. Vann, Attorney-in-Fact

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

*** END OF SECTION ***

Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: **Stephen A. Vann, Sarah C. Belcastro, Jodi L. Jennings, Mario Medina, Oana R Dimulescu**, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: **unlimited** and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

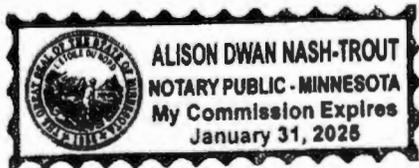
IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this twenty-seventh day of April, 2020.

STATE OF MINNESOTA
HENNEPIN COUNTY



By *Paul J. Brehm*
Paul J. Brehm, Senior Vice President

On this twenty-seventh day of April, 2020, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.



Alison Nash-Trout
Notary Public

I, the undersigned, Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated 26th day of April, 2022.



This Power of Attorney expires
January 31, 2025

Kara Barrow
Kara Barrow, Secretary

PROPOSAL

Proposal of Phillips Contracting Co., Inc. (hereinafter called "BIDDER"), organized and existing under the laws of the State of Mississippi doing business as a (corporation, partnership, limited liability company, or individual) to **TUPELO, MS**, (hereinafter called "OWNER"). In compliance with your advertisement for Bids, BIDDER, hereby proposes to perform all WORK for construction of

"COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS"

in strict accordance with the CONTRACT DOCUMENTS, within the time set forth herein, and at the prices stated below. By submission of the BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been developed independently, without consultation, communication or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in a written "NOTICE TO PROCEED" and to fully complete the Project within **30** consecutive calendar days thereafter. BIDDER further agrees to pay as liquidated damages, the sum of **\$300** for each consecutive calendar day thereafter as provided for elsewhere in these CONTRACT DOCUMENTS.

BIDDER ACKNOWLEDGES receipt of the following ADDENDA:

NUMBER: _____ DATE: _____

NUMBER: _____ DATE: _____

NUMBER: _____ DATE: _____

NUMBER: _____ DATE: _____

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to this bid.

BIDDER understands that the quantities mentioned below are approximate only and are subject to either increase or decrease, and hereby proposes to perform any increased or decreased quantities of work at the Unit Price Bid.

In accordance with the requirements of the Plans, Specifications and Contract Documents, BIDDER proposes to furnish all necessary materials, equipment, labor, tools and other means of construction and to construct the Project in accordance with the Contract Documents within the specified Contract Time for the following Unit Prices specified.

BIDDER further agrees to execute the contract agreement as bound herein within ten (10) days after receipt of contract forms from the OWNER.

BIDDER agrees to pay as liquidated damages the amount provided herein for each consecutive calendar day after the Contract completion date specified in a written "NOTICE TO PROCEED" that he fails to complete the work unless the Contract Time is extended by a written Change Order.

BIDDER also proposes to execute a Performance Bond and a Payment Bond, as shown in the Specifications, each in an amount of not less than **one hundred percent (100%)** of the total of the Base Bid. These Bonds shall not only serve to guarantee the completion of the work on the BIDDERS part, but also to guarantee the excellence of both workmanship and materials until the work is finally accepted.

BIDDER encloses a Bid Bond or Certified Check for 5% of Base Bid Amount DOLLARS (\$ 5% of bid) and hereby agree that in case of failure to execute the Contract and furnish the required Bonds within (10) days after the Receipt of Contract Forms, the amount of this Certified Check or Bid Bond will be forfeited to the OWNER, as liquidated damages arising out of his failure to execute the Contract as proposed.

It is understood that in case BIDDER is awarded the work, the Certified Check or Bid Bond submitted as Bid security will be returned as stipulated in the Specifications.

Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provision of the Equal Opportunity Clause set forth in the Federal Requirements, if applicable.

The low BIDDER shall supply the names and address of major MATERIAL SUPPLIERS AND SUBCONTRACTORS when required to do so by the OWNER.

Inspection trips for prospective BIDDERS will be coordinated thru OWNER prior to submission of proposal.

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices or base bid amount: **SEE PAGE D-4 FOR BID ITEMS.**

NOTES:

1. Unit price amounts are to be shown in figures where indicated. Where a discrepancy in the unit price and the extension of any items occurs, the unit price will govern.
2. Unit prices shall include all labor, materials, bonding, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.
3. Any erasure, change or alteration of any kind must be initialed by the BIDDER.
4. Bid prices shall include sales tax and all other applicable taxes and fees.
5. Any item of work not specified on the Proposal as a separate pay item or indicated as an absorbed cost in a pay item but which is incidental to completion of the work shall be considered as an absorbed cost with full compensation included in the unit price bid for the particular item involved.
6. OWNER reserves the right to award any combination of base and additive alternate bids (if any) it deems advantageous and in the event that all specified bid item units are lump sum (LS), the OWNER reserves the right to delete any such item or combination of such items from the project. The OWNER further reserves the right to delete any item or items desired from the Bid Schedule after the Contract has been awarded. Any deletions, if any made, shall be by Change Order and BIDDER hereby agrees to accept such Change Orders.

SECTION D: BID FORM - BID NO. 2022-012PW
CITY OF TUPELO, MISSISSIPPI
ROADWAY SURFACE TREATMENT IMPROVEMENTS
FEBRUARY, 2022

ITEM NO.	DESCRIPTION	UNIT	QNTY.	UNIT COST	TOTAL COST
1	MOBILIZATION	LS	1	25,000.00	25,000.00
2	EXCESS EXCAVATION	CY	30	22.00	660.00
3	BORROW EXCAVATION	CY	300	35.00	10,500.00
4	TOPSOIL / SOIL CONDITIONER	CY	20	35.00	700.00
5	CRUSHED STONE BASE COURSE	CY	550	97.00	53,350.00
6	CONCRETE PAVEMENT, LIGHT DUTY	SY	3,010	80.00	240,800.00
7	CONCRETE JOINT INSTALLATION	LF	1,000	4.50	4,500.00
8	6" CONCRETE HEADER CURB	LF	900	26.50	23,850.00
9	RECTANGULAR CONCRETE HEADER, Match Existing	LF	120	26.50	3,180.00
10	CONCRETE, CLASS B	CY	6	2,000.00	12,000.00
11	BRICK MASONRY FENCE PILASTERS	EA	8	5,000.00	40,000.00
12	FABRICATED METAL FENCE	LF	112	210.00	23,520.00
13	RELOCATED STEEL FENCE	LF	8	10.00	80.00
14	DUMPSTER ENCLOSURE WITH GATE, PER PLANS	LS	1	22,000.00	22,000.00
15	4' PAINTED TRAFFIC STRIPE, CONTINOUS YELLOW	LF	1500	1.10	1,650.00
16	4' PAINTED TRAFFIC STRIPE, CONTINOUS H.C. BLUE	LF	310	1.10	341.00
17	PAINTED TRAFFIC SYMBOL, YELLOW LEGEND	SF	110	15.00	1,650.00
18	STD. ADA H.C. PARKING SYMBOL, H.C. BLUE PAINT	EA	4	125.00	500.00
19	TEMPORARY TRAFFIC CONTROL	LS	1	5,000.00	5,000.00
20	TEMPORARY EROSION CONTROL	LS	1	5,000.00	5,000.00
GRAND TOTAL					474,281.00

SECTION D: BID FORM - BID NO. 2022-012PW
CITY OF TUPELO, MISSISSIPPI
ROADWAY SURFACE TREATMENT IMPROVEMENTS
FEBRUARY, 2022

IN ACCORDANCE WITH THE PUBLISHED BID NOTICE AND THE CONTRACT DOCUMENTS PROVIDED BY THE CITY FOR THE REFERENCED BID, THE UNDERSIGNED DOES HEREBY AGREE TO FURNISH THE DEFINED MATERIALS, SUPPLIES AND SERVICES TO THE CITY OF TUPELO, MISSISSIPPI FOR THE PRICES AS SPECIFIED HEREIN. BIDDER AGREES TO SPECIFIED PRICES TO BE PROVIDED TO THE CITY UNTIL THE CLOSEOUT OF THE PROJECT.

RESPECTFULLY SUBMITTED BY: Phillips Contracting Co., Inc.
(PLEASE PRINT)

SIGNATURE: 

NAME AND TITLE: Blake Hill President
(PLEASE PRINT)

(SEAL)
IF BY CORPORATION

ADDRESS: P.O. Box 2069
Columbus, MS 39704

PHONE NUMBER: 662-328-6250

D-4b

CORPORATE CERTIFICATE

(To be executed if BIDDER is a Corporation)

I, Doug Phillips certify that I am the Secretary of the Corporation named as CONTRACTOR in the foregoing Proposal; that Blake Hill who signed said Proposal on behalf of the CONTRACTOR, was then President of said Corporation; that said Proposal was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

Name: Doug Phillips

Title: Secretary

Signature: Doug Phillips

Date: 4/28/2022

(CORPORATE SEAL)

PARTNERSHIP CERTIFICATE

(To be executed if BIDDER is a Partnership)

STATE OF _____

COUNTY OF _____

On this ____ day of _____, 2022, before me personally appeared _____, known to be and known by me to be the person who executed the above instrument, who being by me first duly sworn, did depose and say that he is general partner in the firm of:

_____; That said firm consists of himself and _____; and that he executed the foregoing instrument for and on behalf of said firm for the uses and purposes stated herein.

Signature _____

Title _____

(SEAL)

Sworn before me this ____ day of _____, 2022.

_____, Notary Public

My commission expires _____

LIMITED LIABILITY COMPANY CERTIFICATE

(To be executed if BIDDER is a LLC)

I, the undersigned _____, hereby certify that I am the Manager of _____ (the "Company") or if the Company does not have a Manager, a Member of the Company with full power and authority to bind the Company; that _____ who executed the Proposal on behalf of the Company is _____ of the Company with full power and authority to execute same on behalf of the Company, and that the Proposal and the Contract, if awarded to the Company, are within the powers and authority of the Company.

Signature _____

Title _____

(SEAL)

Sworn before me this __ day of _____, 2022.

_____, Notary Public

My commission expires _____

NONRESIDENT BIDDER CERTIFICATE

(to be executed if a BIDDER is a nonresident)

I, _____, hereby certify that the CONTRACTOR,
_____, is domiciled in the State of _____

and (check and complete one):

(___) attached is a copy of the State of _____'s current law pertaining to the treatment of nonresident CONTRACTORS. Paragraph ____, page ____ of said law grants resident CONTRACTORS a ____ percent preference over nonresident CONTRACTORS for similar projects.

(___) the State of _____ has no current law pertaining to the treatment of nonresident contractors.

(___) I claim "resident contractor" status based upon having been qualified to do business in this state and having maintained a permanent full-time office in the State of Mississippi for two (2) years prior to January 1, 1986. Proof of such claim must be submitted and approved before contract is signed.

Signature _____

Title _____

(SEAL)

Sworn before me: this __ day of _____, 2022.

_____, Notary Public

My commission expires _____

NON-COLLUSION AFFIDAVIT
(TO BE EXECUTED IN DUPLICATE)

STATE OF MISSISSIPPI
COUNTY OF Lee

I, Blake Hill
(name of person signing affidavit)

individually, and in my capacity as President
(title)

of Phillips Contracting Co., Inc.
(name of firm, partnership, limited liability company, or corporation.)

being duly sworn, on oath do depose and say as follows:

(a) That Phillips Contracting Co., Inc. Bidder on the "COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS" for **Tupelo, MS**, has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

Signature [Signature]

Title President

(SEAL)

Sworn before me this 25th day of April, 2022.

[Signature] Notary Public

My commission expires 1/28/23 January 28, 2023



NOTE: FAILURE TO PROPERLY SIGN AND NOTARIZE THIS AFFIDAVIT WILL DISQUALIFY THE BID.

NON-COLLUSION AFFIDAVIT
(TO BE EXECUTED IN DUPLICATE)

STATE OF MISSISSIPPI
COUNTY OF Lee

I, Blake Hill
(name of person signing affidavit)

individually, and in my capacity as President
(title)

of Phillips Contracting Co., Inc.
(name of firm, partnership, limited liability company, or corporation.)

being duly sworn, on oath do depose and say as follows:

(a) That Phillips Contracting Co., Inc. Bidder on the "COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS" for **Tupelo, MS** has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

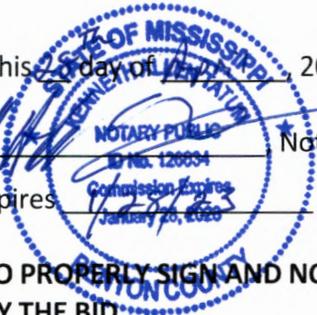
(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

Signature [Handwritten Signature]
Title President

(SEAL)

Sworn before me this 17 day of April, 2022.

[Handwritten Signature] Notary Public
My commission expires 1/28/23



NOTE: FAILURE TO PROPERLY SIGN AND NOTARIZE THIS AFFIDAVIT WILL DISQUALIFY THE BID.

END OF SECTION

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That Phillips Contracting Co., Inc.
(Name of Contractor)

P.O. Box 2069, Columbus, MS 39704-2069
(Address of Contractor)

a Corporation hereinafter called "Principal", and
(Corporation, Partnership, Limited Liability Company or Individual)

Fidelity and Deposit Company of Maryland hereinafter called
(Name of Surety) "Surety",

are held and firmly bound unto **TUPELO, MS**, hereinafter called "**OWNER**" in the penal sum of 5% of Total Bid, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents. Signed, this the 28th day of April 2022. The Condition of the above obligation is such that whereas the Principal has submitted to the **CITY OF TUPELO, MS** a certain BID, attached hereto and hereby made a part thereof to enter into a contract in writing, for the construction of:

"COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS"

NOW, THEREFORE,

- (a) If said BID shall be rejected, or,
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract on the Contract form as attached hereto (properly completed in accordance with said BID) and shall furnish BONDS for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection herewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void, otherwise the same shall remain in effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these present to be signed by their officers, the day and year first set forth above.

Phillips Contracting Co., Inc.
Principal

(L.S.)

Fidelity and Deposit Company of Maryland
Surety


By: _____
President


By: _____
Peggy L. Jackson, Attorney-in-Fact
Resident Mississippi Agent
Fisher Brown Bottrell Insurance, Inc.



IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

*** END OF SECTION ***

**ZURICH AMERICAN INSURANCE COMPANY COLONIAL
AMERICAN CASUALTY AND SURETY COMPANY FIDELITY
AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint, **Jim A. ARMSTRONG, Jerry G. VEAZEY, JR., Jerry Eugene HORNER JR., Jason J. YOUNG, Trina COBB, Peggy L. JACKSON, Brody Eric BUCKLEY, Stephen Wesley PRICE JR. and Amanda Jean CHARFAUROS, all of Jackson, Mississippi,, EACH**, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 31st day of July, A.D. 2019.



Attest:

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

By: *Robert D. Murray*
Vice President

By: *Dawn E. Brown*
Secretary

**State of Maryland
County of Baltimore**

On this 31st day of July, A.D. 2019, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2023

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 28th day of April, 2022.



Michael C. Fay

Michael C. Fay, Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way Schaumburg, IL
60196-1056
www.reportsfclaims@zurichna.com
800-626-4577

PROPOSAL

Proposal of Timbo's Construction (hereinafter called "BIDDER"), organized and existing under the laws of the State of Mississippi doing business as a (corporation, partnership, limited liability company, or individual) to **TUPELO, MS**, (hereinafter called "OWNER"). In compliance with your advertisement for Bids, BIDDER, hereby proposes to perform all WORK for construction of

"COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS"

in strict accordance with the CONTRACT DOCUMENTS, within the time set forth herein, and at the prices stated below. By submission of the BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been developed independently, without consultation, communication or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in a written "NOTICE TO PROCEED" and to fully complete the Project within 30 consecutive calendar days thereafter. BIDDER further agrees to pay as liquidated damages, the sum of \$300 for each consecutive calendar day thereafter as provided for elsewhere in these CONTRACT DOCUMENTS.

BIDDER ACKNOWLEDGES receipt of the following ADDENDA:

NUMBER: <u>None</u>	DATE: _____
NUMBER: <u>None</u>	DATE: _____
NUMBER: <u>None</u>	DATE: _____
NUMBER: <u>None</u>	DATE: _____

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to this bid.

BIDDER understands that the quantities mentioned below are approximate only and are subject to either increase or decrease, and hereby proposes to perform any increased or decreased quantities of work at the Unit Price Bid.

In accordance with the requirements of the Plans, Specifications and Contract Documents, BIDDER proposes to furnish all necessary materials, equipment, labor, tools and other means of construction and to construct the Project in accordance with the Contract Documents within the specified Contract Time for the following Unit Prices specified.

BIDDER further agrees to execute the contract agreement as bound herein within ten (10) days after receipt of contract forms from the OWNER.

BIDDER agrees to pay as liquidated damages the amount provided herein for each consecutive calendar day after the Contract completion date specified in a written "NOTICE TO PROCEED" that he fails to complete the work unless the Contract Time is extended by a written Change Order.

BIDDER also proposes to execute a Performance Bond and a Payment Bond, as shown in the Specifications, each in an amount of not less than **one hundred percent (100%)** of the total of the Base Bid. These Bonds shall not only serve to guarantee the completion of the work on the BIDDERS part, but also to guarantee the excellence of both workmanship and materials until the work is finally accepted.

BIDDER encloses a Bid Bond or Certified Check for 5% of Base Bid Amount DOLLARS (\$20,107.25) and hereby agree that in case of failure to execute the Contract and furnish the required Bonds within (10) days after the Receipt of Contract Forms, the amount of this Certified Check or Bid Bond will be forfeited to the OWNER, as liquidated damages arising out of his failure to execute the Contract as proposed.

It is understood that in case BIDDER is awarded the work, the Certified Check or Bid Bond submitted as Bid security will be returned as stipulated in the Specifications.

Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provision of the Equal Opportunity Clause set forth in the Federal Requirements, if applicable.

The low BIDDER shall supply the names and address of major MATERIAL SUPPLIERS AND SUBCONTRACTORS when required to do so by the OWNER.

Inspection trips for prospective BIDDERS will be coordinated thru OWNER prior to submission of proposal.

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices or base bid amount: **SEE PAGE D-4 FOR BID ITEMS.**

NOTES:

1. Unit price amounts are to be shown in figures where indicated. Where a discrepancy in the unit price and the extension of any items occurs, the unit price will govern.
2. Unit prices shall include all labor, materials, bonding, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.
3. Any erasure, change or alteration of any kind must be initialed by the BIDDER.
4. Bid prices shall include sales tax and all other applicable taxes and fees.
5. Any item of work not specified on the Proposal as a separate pay item or indicated as an absorbed cost in a pay item but which is incidental to completion of the work shall be considered as an absorbed cost with full compensation included in the unit price bid for the particular item involved.
6. OWNER reserves the right to award any combination of base and additive alternate bids (if any) it deems advantageous and in the event that all specified bid item units are lump sum (LS), the OWNER reserves the right to delete any such item or combination of such items from the project. The OWNER further reserves the right to delete any item or items desired from the Bid Schedule after the Contract has been awarded. Any deletions, if any made, shall be by Change Order and BIDDER hereby agrees to accept such Change Orders.

SECTION D: BID FORM - BID NO. 2022-012PW CITY OF TUPELO, MISSISSIPPI ROADWAY SURFACE TREATMENT IMPROVEMENTS FEBRUARY, 2022					
ITEM NO.	DESCRIPTION	UNIT	QNTY.	UNIT COST	TOTAL COST
1	MOBILIZATION	LS	1	10,000	\$10,000
2	EXCESS EXCAVATION	CY	30	69.96	\$2,099
3	BORROW EXCAVATION	CY	300	18.55	\$5,565
4	TOPSOIL / SOIL CONDITIONER	CY	20	63.60	\$1,272
5	CRUSHED STONE BASE COURSE	CY	550	84.80	\$46,640
6	CONCRETE PAVEMENT, LIGHT DUTY	SY	3,010	75.72	\$227,918
7	CONCRETE JOINT INSTALLATION	LF	1,000	4.45	\$4,450
8	6" CONCRETE HEADER CURB	LF	900	21.20	\$19,080
9	RECTANGULAR CONCRETE HEADER, Match Existing	LF	120	21.20	\$2,544
10	CONCRETE, CLASS B	CY	6	861.25	\$5,168
11	BRICK MASONRY FENCE PILASTERS	EA	8	2,451.25	\$19,610
12	FABRICATED METAL FENCE	LF	112	160.89	\$18,020
13	RELOCATED STEEL FENCE	LF	8	160.86	\$1,287
14	DUMPSTER ENCLOSURE WITH GATE, PER PLANS	LS	1	27,560	\$27,560
15	4' PAINTED TRAFFIC STRIPE, CONTINUOUS YELLOW	LF	1500	0.90	\$1,350
16	4' PAINTED TRAFFIC STRIPE, CONTINUOUS H.C. BLUE	LF	310	0.90	\$279
17	PAINTED TRAFFIC SYMBOL, YELLOW LEGEND	SF	110	12.72	\$1,400
18	STD. ADA H.C. PARKING SYMBOL, H.C. BLUE PAINT	EA	4	106.00	\$424.00
19	TEMPORARY TRAFFIC CONTROL	LS	1	1,590	\$1,590
20	TEMPORARY EROSION CONTROL	LS	1	5,300	\$5,300
GRAND TOTAL					\$402,156

SECTION D: BID FORM - BID NO. 2022-012PW
CITY OF TUPELO, MISSISSIPPI
ROADWAY SURFACE TREATMENT IMPROVEMENTS
FEBRUARY, 2022

IN ACCORDANCE WITH THE PUBLISHED BID NOTICE AND THE CONTRACT DOCUMENTS PROVIDED BY THE CITY FOR THE REFERENCED BID, THE UNDERSIGNED DOES HEREBY AGREE TO FURNISH THE DEFINED MATERIALS, SUPPLIES AND SERVICES TO THE CITY OF TUPELO, MISSISSIPPI FOR THE PRICES AS SPECIFIED HEREIN. BIDDER AGREES TO SPECIFIED PRICES TO BE PROVIDED TO THE CITY UNTIL THE CLOSEOUT OF THE PROJECT.

RESPECTFULLY SUBMITTED BY: Timbo's Construction
(PLEASE PRINT)

SIGNATURE: [Handwritten Signature]

NAME AND TITLE: Jimmy Sandifer, president
(PLEASE PRINT) (SEAL)
IF BY CORPORATION

ADDRESS: 3853 Highway 61 N
Cleveland, MS 38732

PHONE NUMBER: 662-843-4740

D-4b

CORPORATE CERTIFICATE

(To be executed if BIDDER is a Corporation)

I, Laquita Sandifer certify that I am the Secretary of the Corporation named as CONTRACTOR in the foregoing Proposal; that Jimmy Sandifer who signed said Proposal on behalf of the CONTRACTOR, was then president of said Corporation; that said Proposal was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

Name: Laquita Sandifer

Title: Secretary

Signature: Laquita Sandifer

Date: 4/28/2022

(CORPORATE SEAL)

NON-COLLUSION AFFIDAVIT
(TO BE EXECUTED IN DUPLICATE)

STATE OF MISSISSIPPI
COUNTY OF BOLLIVAR

I, Jimmy Sandifer
(name of person signing affidavit)

individually, and in my capacity as President
(title)

of Timbo's Construction Inc.
(name of firm, partnership, limited liability company, or corporation.)

being duly sworn, on oath do depose and say as follows:

(a) That Timbo's Construction Bidder on the "COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS" for **Tupelo, MS** has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

Signature [Handwritten Signature]
Title President

(SEAL)
Sworn before me this 28 day of April, 2022.

Tammy Walker, Notary Public
My commission expires April 30, 2025



NOTE: FAILURE TO PROPERLY SIGN AND NOTARIZE THIS AFFIDAVIT WILL DISQUALIFY THE BID.

NON-COLLUSION AFFIDAVIT
(TO BE EXECUTED IN DUPLICATE)

STATE OF MISSISSIPPI

COUNTY OF Bolivar

I, Jimmy Sandifer
(name of person signing affidavit)

individually, and in my capacity as President
(title)

of Timbo's Construction Inc.
(name of firm, partnership, limited liability company, or corporation.)

being duly sworn, on oath do depose and say as follows:

(a) That Timbo's Construction Bidder on the "COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS" for Tupelo, MS, has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

Signature [Handwritten Signature]
Title President



(SEAL)
Sworn before me this 28 day of April, 2022.

Tammy Walker, Notary Public

My commission expires April 30, 2025

NOTE: FAILURE TO PROPERLY SIGN AND NOTARIZE THIS AFFIDAVIT WILL DISQUALIFY THE BID.

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That Timbo's Construction, Inc.
(Name of Contractor)

3853 Highway 61 N., Cleveland, MS 38732
(Address of Contractor)

a Corporation hereinafter called "Principal", and
(Corporation, Partnership, Limited Liability Company or Individual)

The Gray Casualty & Surety Company hereinafter called
(Name of Surety) "Surety",

are held and firmly bound unto **TUPELO, MS**, hereinafter called "**OWNER**" in the penal sum of 5% of Total Bid, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents. Signed, this the 28th day of April 2022. The Condition of the above obligation is such that whereas the Principal has submitted to the **CITY OF TUPELO, MS** a certain BID, attached hereto and hereby made a part thereof to enter into a contract in writing, for the construction of:

"COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS"

NOW, THEREFORE,

- (a) If said BID shall be rejected, or,
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract on the Contract form as attached hereto (properly completed in accordance with said BID) and shall furnish BONDS for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection herewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void, otherwise the same shall remain in effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

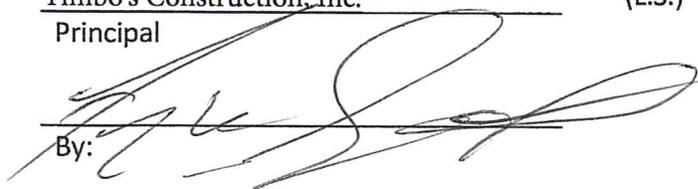
The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these present to be signed by their officers, the day and year first set forth above.

Timbo's Construction, Inc.
Principal

(L.S.)

The Gray Casualty & Surety Company
Surety

By: 

By: 
Peggy L. Jackson, Attorney-in-Fact
Resident Mississippi Agent
Fisher Brown Bottrell Insurance, Inc.



IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

*** END OF SECTION ***

**THE GRAY INSURANCE COMPANY
THE GRAY CASUALTY & SURETY COMPANY**

GENERAL POWER OF ATTORNEY

Bond Number: BID BOND **Principal:** Timbo's Construction, Inc.

Project: City of Tupelo, Court Street Downtown Parking Lot Improvements

KNOW ALL BY THESE PRESENTS, THAT The Gray Insurance Company and The Gray Casualty & Surety Company, corporations duly organized and existing under the laws of Louisiana, and having their principal offices in Metairie, Louisiana, do hereby make, constitute, and appoint: **Jerry G. Veazey, Jr., Trina Cobb, Peggy L. Jackson, Angela Bullie, Brody Eric Buckley, Amanda Jean Charfauros, and Stephen Wesley Price, Jr. of Jackson, Mississippi jointly and severally** on behalf of each of the Companies named above its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its deed, bonds, or other writings obligatory in the nature of a bond, as surety, contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the amount of \$15,000,000.00.

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both The Gray Insurance Company and The Gray Casualty & Surety Company at meetings duly called and held on the 26th day of June, 2003.

“RESOLVED, that the President, Executive Vice President, any Vice President, or the Secretary be and each or any of them hereby is authorized to execute a power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings, and all contracts of surety, and that each or any of them is hereby authorized to attest to the execution of such Power of Attorney, and to attach the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be binding upon the Company now and in the future when so affixed with regard to any bond, undertaking or contract of surety to which it is attached.

IN WITNESS WHEREOF, The Gray Insurance Company and The Gray Casualty & Surety Company have caused their official seals to be hereinto affixed, and these presents to be signed by their authorized officers this 28th day of October, 2021.



By:

Michael T. Gray
President
The Gray Insurance Company

Cullen S. Piske
President
The Gray Casualty & Surety Company



State of Louisiana

ss:

Parish of Jefferson

On this 28th day of October, 2021, before me, a Notary Public, personally appeared Michael T. Gray, President of The Gray Insurance Company, and Cullen S. Piske, President of The Gray Casualty & Surety Company, personally known to me, being duly sworn, acknowledged that they signed the above Power of Attorney and affixed the seals of the companies as officers of, and acknowledged said instrument to be the voluntary act and deed, of their companies.



Leigh Anne Henican
Notary Public
Notary ID No. 92653
Orleans Parish, Louisiana

Leigh Anne Henican
Notary Public, Parish of Orleans State of Louisiana
My Commission is for Life

I, Mark S. Manguno, Secretary of The Gray Insurance Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 28th day of April, 2022.

I, Leigh Anne Henican, Secretary of The Gray Casualty & Surety Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 28th day of April, 2022.



State of Mississippi

BOARD OF CONTRACTORS

ACTIVE

TIMBO'S CONSTRUCTION INC.
3853 HWY 61 NORTH
CLEVELAND, MS 38732

is duly registered and entitled to perform

- 1) BUILDING CONSTRUCTION
- 2) ELECTRICAL WORK
- 3) HIGHWAY, STREET AND BRIDGE CONSTRUCTION
- 4) MECHANICAL WORK
- 5) PLUMBING

(We have herewith set our hand and caused the Seal of the Mississippi Board of Contractors to be affixed this 13 day of Apr., 2022



CERTIFICATE OF RESPONSIBILITY

No. 12475-MC

Expires Apr. 13, 2023

Paul A. Carroll

CHAIRMAN OF THE BOARD

Century Construction Group, Inc.
PO Box 1366
Tupelo, MS 38802
MS Certificate of Responsibility Number: 18118-MC
Expires: January 14, 2023

City of Tupelo, Mississippi
Attention: Traci Dillard
71 East Troy St.
Tupelo, MS 38804

Proposal for: 2022-012PW
City of Tupelo, Mississippi
Court Street Downtown Parking Lot Improvements

To Be Opened at: 10:00 AM, Thursday, April 28, 2022

Century Construction Group, Inc. MS Certificate of Responsibility No.: 18118-MC, Expires January 14, 2023

CONTRACT DOCUMENTS AND SPECIFICATIONS
FOR
COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS
BID NO. 2022-012PW
Tupelo Public Works Department
City of Tupelo, Mississippi

Prepared For:



FEBRUARY 2022

Prepared By:



DABBS CORPORATION
1050 N. Eason Boulevard
Tupelo, Mississippi 38804

**CONTRACT DOCUMENTS AND SPECIFICATIONS
FOR
CITY OF TUPELO, MISSISSIPPI**

COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS

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SECTION A
ADVERTISEMENT FOR BIDS

ADVERTISEMENT FOR BIDS

NOTICE is hereby given that the Mayor and City Council of the City of Tupelo, Mississippi will receive written sealed bids until the hour of **10:00 o'clock A.M. local time on Thursday, April 28, 2022** at the Purchasing Office, City Hall 1st Floor, 71 East Troy Street, Tupelo, Mississippi, 38804 for the furnishing of all labor and materials and for the construction of the certain Project designated as the "*COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS*", **Bid No. 2022-012PW**, with Contract Documents and Specifications being on file at the office of the City Clerk at City Hall in Tupelo, Mississippi. Electronic bids will be received until the specified date and time via online submission through www.tupelomsbids.com.

Bids are related to the rehabilitation of an existing public parking lot located between Main St. and Court St near the Green St. intersection within the City of Tupelo as defined in the Contract Documents. The City of Tupelo Public Works Department will provide demolition work to include the removal of existing concrete pavement, removal of existing asphalt pavement, removal of existing concrete curb & gutter, removal of existing landscaping, etc. in advance of the work to be completed by the Contractor. The Project includes excavation, finish grading, crushed stone, concrete curbs, concrete pavement, traffic striping, fabrication/installation of brick masonry / metal fence and related work as required to complete the proposed parking lot improvements as defined in the Contract Documents. The Project shall make provisions for all labor, materials, equipment and incidentals required to provide the improvements as defined in the Proposal document and as represented in the Project Drawings, General Conditions of Work and Technical Specifications as set forth in the Contract Documents.

The **total** Contract Time shall not exceed **30** consecutive calendar days.

Contract Documents, including Drawings and Specifications, may be purchased online in hard copy or electronic format at www.tupelomsbids.com. Any questions regarding purchase of bid documents from this website should be directed to Plan House at 662-407-0193.

Should a bidder choose to submit a bid electronically in place of a sealed bid, it may be submitted at www.tupelomsbids.com. Any questions regarding electronic bidding should be directed to Plan House at 662-407-0193.

Award will be made to the lowest and best bidder and the Mayor and City Council reserve the right to reject any and all bids and to waive any and all informalities.

BY ORDER OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TUPELO, MISSISSIPPI.

CITY OF TUPELO, MISSISSIPPI

**BY: s/b Traci Dillard
TRACI DILLARD, City Purchasing Clerk**

Publish Dates: 03/29/2022 and 04/05/2022 in the NE Mississippi Daily Journal.

SECTION B
INFORMATION TO BIDDERS

INFORMATION FOR BIDDERS

1. **Receipt and Opening of Bids:** Bids will be received by the City of Tupelo no later than 10:00 am local time on **Thursday, April 28, 2022** via the methods specified in SECTION A – Advertisement, which is bound herewith and per the requirements set forth herein.

2. **Bids:**
 - A. Shall be made on the forms provided and all applicable blank spaces filled in. Alterations, erasures or changes of any kind must be initialed by the BIDDER and shall not contain any recapitulation of the work to be done. No oral, telephonic or telegraphic proposals will be considered.
 - B. **BIDDERS ARE HEREBY NOTIFIED THAT ANY PROPOSAL ACCOMPANIED BY LETTERS, QUALIFYING IN ANY MANNER, THE CONDITION UNDER WHICH THE PROPOSAL IS TENDERED, WILL BE CONSIDERED AS AN IRREGULAR BID AND SHALL NOT BE CONSIDERED IN MAKING THE AWARD.**
 - C. Bids may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Bids received after the time and date specified shall not be considered.
 - D. Submit bids (**in duplicate**) in an opaque sealed envelope marked in the lower left hand corner as follows:
 1. Bid for construction of: **BID NO. 2022-012PW – “COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS”**
 2. Certificate of Responsibility No. 18118-MC.
 - E. Any addenda issued during the bidding shall be noted on the Bid Form and shall become a part of the executed Contract.

3. **Method of Bidding:**
 - A. The bid will consist of a base bid amount in accordance with the totals bid per various items and schedules of the project Bid Form with various additive and/or deductive alternatives.
 - B. The **CITY OF TUPELO** reserves the right to reject any or all bids and to waive any or all informalities.
 - C. The **CITY OF TUPELO** reserves the right to award the base bid and any additive or deductive alternatives which are in the best interest of the City.

4. **Addenda and Interpretations:**
 - A. Should a BIDDER find discrepancies in, or omissions from, the drawings or specifications or should they be in doubt as to their written meaning, they should at once notify the ENGINEER, who will send a written instruction or interpretation to all

known holders of the documents. The ENGINEER will not be responsible for any oral instructions.

- B. Addenda to specifications or drawings that may be issued before or during the time of bidding shall be included in the bid form and will become a part of the Contract.

5. **Certificate of Responsibility Number:**

- A. Each CONTRACTOR submitting a bid must show on the face of the envelope containing the bid, their State of Mississippi Certificate of Responsibility Number unless there appears a statement on the face of the envelope that the enclosed bid does not exceed \$50,000.00 with respect to public projects or \$100,000.00 with respect to private projects.
- B. **No bids will be accepted, opened or considered unless the above information is given as specified.**
- C. Sufficient evidence that said Certificate of Responsibility Number has been issued and is in effect at the time of receiving bids, and that BIDDER'S Certificate of Responsibility work classification(s) qualifies them to perform the type(s) of work required for this project, must be submitted when required by OWNER or ENGINEER.

6. **Notice to Nonresident Bidders:**

- A. A nonresident BIDDER domiciled in a state having laws granting preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the nonresident BIDDERS's state awards contracts to Mississippi contractors bidding under similar circumstances; and resident contractors actually domiciled in Mississippi, be they corporate, individuals or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the state of domicile of the nonresident. This preference, if it is a percentage of the bid or other monetary amount, is not to be added to the nonresident BIDDER's bid by the nonresident BIDDER. The ENGINEER will add a line to the bid tabulation report that shows the amount of the nonresident BIDDER premium when the bids are tabulated for the sole purpose of determining the order of the BIDDERS.
- B. When a nonresident CONTRACTOR submits a bid for a public project, he shall attach thereto a copy of his resident state's current bid law pertaining to such state's treatment of nonresident CONTRACTORS.
- C. Nonresident BIDDERS Certificate: CONTRACTOR must complete the Nonresident BIDDERS Certificate included in the Contract Documents (Section C) and submit same as part of their bid.
- D. As used in this section, the term "resident contractors" includes a nonresident person, firm or corporation that has been qualified to do business in this state and

has maintained a permanent full-time office in the State of Mississippi for two (2) years prior to January 1, 1986, and the subsidiaries and affiliates of such a person, firm or corporation.

7. **Bid Security:** Each bid must be accompanied by a certified check of the BIDDER, or a Bid Bond prepared on the form of a bid bond as included herein, duly executed by the BIDDER as principal and having as surety thereon a surety company licensed by the State of Mississippi and signed by an agent resident in Mississippi, **in the amount of five percent (5%) of the base bid.**
8. **Liquidated Damages for Failure to Enter into Contract:** The successful BIDDER, upon their failure or refusal to execute and deliver the contract and bonds required within ten (10) days after they have received the contract for execution, shall forfeit to the OWNER, as liquidated damages, the bid security deposited with their bid.
9. **Security for Faithful Performance:** Simultaneously with their delivery of the executed Contract, the CONTRACTOR shall furnish Contract Performance and Payment Bonds in the full amount of the Contract for the payment of all persons performing labor on this Contract and for furnishing all materials in connection with this Contract. The surety on such Bond or Bonds shall be a duly authorized Surety Company doing business in the State of Mississippi.
10. **Law and Regulations:** The BIDDERS'S attention is directed to the fact that all applicable state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.
11. **Condition of Work:** Each BIDDER shall visit the site and inform themselves fully of the conditions at the site relating to the completion of the project. Failure to do so will not relieve a successful BIDDER of their obligation to furnish all material and labor necessary to carry out the provisions of their contract.
12. **Public Access / Public Safety:** It shall be the responsibility of the Contractor to understand that the proposed improvements are located within a public parking lot adjacent to businesses and public streets. The Contractor shall be required to provide and implement traffic control devices/measures in advance of and around construction work areas for the duration of the project to protect the public, workers, pedestrians, vehicular traffic, etc. during the entire term of the proposed improvements. Access to the portions of the parking lot (adjacent to TW&L Collection Offices) from existing local streets shall be maintained by the Contractor for the duration of the Project, unless approved in writing by the City of Tupelo City Engineer.
13. **Obligation of BIDDER:** At the time of the opening of bids, each BIDDER will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Drawings, Specifications and Contract Documents (including addenda issued, if any).

14. **Time of Completion:** BIDDER must agree to commence work on or before the date specified in a written "Notice to Proceed" from the OWNER and to fully complete the project within the number of consecutive calendar days as set forth in these Contract Documents.
15. **Proposal Guarantees:** Proposal guarantees will be returned to the unsuccessful BIDDERS as soon as a Contract has been awarded and to the successful bidder after they have executed the Contract and have furnished Contract Performance and Payment Bonds and Certificates of Insurance as required.
16. **Non-Collusion Affidavit:** CONTRACTOR must complete **(in duplicate)** the non-collusion affidavits included in the Contract Documents (Section C) and submit same as part of their bid. **FAILURE TO DO SO WILL DISQUALIFY THEIR BID.**
17. **Interpretations:** No oral interpretation made to any BIDDER as to the meaning of the Drawings and Specifications or Contract Documents shall be considered an effective modification of the provisions of the Contract Documents. Written and oral requests for interpretation of the Drawings and Specifications shall be submitted to the ENGINEER for a formal decision which will be given in writing to all Drawing and Specification holders.
18. **Subcontractor:** The BIDDER is specifically advised that any person, firm or other party to whom it proposes to award a subcontract must be acceptable to the OWNER. **The total allowable subcontract amount shall not exceed fifty percent (50%) of contract amount unless otherwise approved by the OWNER.**
19. **Qualifications of Subcontractors: Material and Equipment Suppliers:**
 - A. Within ten (10) working days after award of contract, the CONTRACTOR will submit to the OWNER and the ENGINEER for acceptance, a list of the names of Subcontractors and such other persons and organizations (including those who are to furnish principal items of materials or equipment) proposed for those portions of the Work as to which the identity of the Subcontractors and other persons and organizations must be submitted as specified in the Contract Documents. Within thirty (30) working days after receiving the list, the ENGINEER will notify the CONTRACTOR in writing if either the OWNER or the ENGINEER, after due investigation, has reasonable objection to any Subcontractor, person or organization on such list. The failure of the OWNER or the ENGINEER to make objection to any Subcontractor, person or organization on the list within thirty (30) working days of receipt shall constitute an acceptance of such Subcontractor, person or organization but shall not constitute a waiver of any right of the OWNER or the ENGINEER to reject any Work, Material or Equipment that is not in conformance with the requirements of the Contract Documents.
 - B. The CONTRACTOR will not employ any Subcontractor, other person or organization, whether initially or as a substitute, against whom the OWNER or the ENGINEER may have reasonable objection, nor will the CONTRACTOR be required to employ a Subcontractor who has been accepted by the OWNER and the ENGINEER, unless the ENGINEER determines that there is good cause for doing so.

- C. The CONTRACTOR shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of monies due Subcontractors or other persons or organizations, except as may otherwise be required by law. OWNER or ENGINEER may furnish to Subcontractors or other persons or organizations, to the extent practicable, evidence of amounts paid to the CONTRACTOR on account of specific Work done in accordance with the schedule of values.
- D. The divisions and sections of the Specifications and the identifications of Drawings shall not control the CONTRACTOR in dividing the Work among Subcontractors or delineating the Work to be performed by specific trades.
- E. The CONTRACTOR agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the OWNER.
- F. All Work performed for the CONTRACTOR by a Subcontractor shall be pursuant to an appropriate agreement between the CONTRACTOR and the Subcontractor.
- G. The CONTRACTOR shall be responsible for the coordination of the trades and Subcontractors engaged in the Work.
- a. The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the CONTRACTOR by the terms of these General Conditions and other Contract Documents insofar as applicable to the Work of Subcontractors, and to give the CONTRACTOR the same power as regards terminating subcontracts that the OWNER may exercise over the CONTRACTOR under provisions of the Contract Documents.
- b. The OWNER or ENGINEER will not undertake to settle differences between the CONTRACTOR and his Subcontractors or between Subcontractors.
- c. If in the opinion of the ENGINEER, a Subcontractor on the Project proves to be incompetent or otherwise unsatisfactory, he shall be replaced if and when the CONTRACTOR is so directed in writing.

20. **Qualifications of BIDDERS:** The OWNER may make such investigations as he deems necessary to determine the ability of the BIDDER to perform the Work and the BIDDER shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject a Bid if the evidence submitted by or investigation of such BIDDER fails to satisfy the OWNER that such BIDDER is properly qualified to carry out the items of Work contemplated therein.
21. **Insurance:** The CONTRACTOR will be required to carry the types and amounts of insurance specified in the Project Supplemental Conditions, Section J.4, as enclosed herein for the full term of the Contract.
22. **Contract Award:** Award of Contract, if made, shall be within **30 days** of date of Receipt of Bids.
23. **Issuance of "Notice to Proceed":** If the Contract is awarded, the OWNER will issue the "Notice to Proceed" within **30 days** after the date of Agreement of the Contract. The Notice To Proceed date will be requested by the Contractor and shall be approved by the Owner. The Owner, if necessary, will approve a Notice To Proceed date outside of the timeframe defined herein based on the coordination between the Contractor, Tupelo Public Works and Tupelo Water & Light in regards to the initiation/completion of demolition improvements by the City of Tupelo for the work represented on the Demolition Plan in the Project Drawings. If warranted, the Owner may delay the Notice To Proceed date beyond 30 days of the date of the execution of the Agreement in order to derive more favorable conditions for the proposed demolition (completed by Owner) and parking lot work (completed by Contractor).

SECTION C
GENERAL CONDITIONS OF WORK

SECTION C – GENERAL CONDITIONS OF WORK

CITY OF TUPELO PUBLIC WORKS DEPARTMENT

DATE: February 1, 2022
SUBJECT: General Conditions / Scope of Work / Project Area
PROJECT: COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS

GENERAL PROJECT INFORMATION

Generally, this contract is to provide the labor, equipment and materials as necessary to provide the work as described herein and as represented on the Project Drawings in accordance with the requirements set forth in the Contract Documents and Specifications. Materials and supplies provided by the Contractor shall be in accordance with the Project Drawings, General Conditions of Work, Technical Specifications and all applicable local, state and federal guidelines associated with providing the specified items on the Bid Form.

The project includes providing/installing proposed paving, curb, fencing, striping, garbage dumpster enclosure, etc. and related work to complete the parking lot improvements as represented on the Project Drawings and defined in the Contract Documents. If there is not a pay item associated with a specific type of work or material that is required for providing the necessary improvements, then such work and/or materials shall be provided by the Contractor and shall be absorbed into other pay items that are included on the bid form. No additional or separate payment shall be provided by the Owner for providing the labor, materials, work, etc. as required to meet the project requirements related to the improvements specified herein. More detailed information related to the specific work required is included herein under the Project Pay Items information.

PROJECT AREA

All proposed project work related to this contract shall be within the Tupelo City Limits. As represented on the Project Drawings, the Project Site is located between the Lee County Board of Supervisors Building and the Tupelo Water & Light Administrative Offices between Main St. and Court St. All proposed improvements shall be located within publicly owned properties. The contractor shall not be authorized by the Owner to access or utilize any other adjacent public properties or any private property as part of this project. If the contractor utilizes any other public or private property during this project, the contractor shall be responsible for obtaining the necessary written permission and/or permits as required for access/use from respective property owners.

DEMOLITION OF EXISTING INFRASTRUCTURE

There is a demolition plan included as Sheet C2 of the Project Drawings. This sheet is provided for reference of the work that will be completed by the City of Tupelo prior to the beginning of the work to be completed by the contractor for this Project. As indicated on the Demolition Plan, The City of Tupelo will complete the demolition of existing infrastructure prior to the beginning of the Project. No work related to the demolition as represented on Sheet C2, Demolition Plan, shall be included in the project pay items and/or the prices provided by the Contractor for this Project.

The Tupelo Public Works Department will remove the existing pavement, existing curbs, existing landscaping, existing dumpster enclosure, existing concrete parking stops, etc. as represented on Sheet C2 of the Project Drawings. Tupelo Water and Light shall remove existing light poles and related electrical service equipment within the Project limits.

COORDINATION BETWEEN OWNER AND CONTRACTOR

The existing project area is utilized as a public parking lot that provides downtown parking for local businesses, government buildings, etc. Given the importance of this parking lot the downtown Tupelo area and local businesses and governmental entities, an essential part of the Project will be the coordination between the Owner and Contractor in order to facilitate the proposed improvements to minimize the duration of the project and other related impacts. Thus, upon award and execution of the contract, the contractor will be required to coordinate with the Owner regarding ordering materials and project schedule such that the City of Tupelo is able to complete the demolition work in a timeframe and manner that will allow the contractor to be issued a Notice to Proceed and begin the proposed improvements immediately following the completion of the necessary demolition work.

All material submittals, coordination of sub-contractors and related pre-construction activities will need to be scheduled and completed prior to the beginning of the demolition work by the City of Tupelo. Based on these criteria, the contractor will request a Notice to Proceed date and, upon agreement and issuance by the City, the contractor shall be prepared to begin this work on the Notice to Proceed date given that the demolition work is substantially complete to allow this work to begin.

Details are included on Sheet C5 of the Project Drawings representing dimensions for the existing and proposed brick masonry fence structures and of the existing cast iron fence sections that connect to the brick masonry fence structures. The Contractor will be required to submit shop drawings to the Engineer for review and approval of the (1.) proposed brick masonry fence structures and (2.) the cast iron fence panels. Once these are approved, the contractor shall coordinate the fabrication of the cast iron fence panels and order the materials required for both the cast iron fence panels and the brick masonry fence structures. The contractor shall coordinate with the Engineer regarding the delivery date of the proposed materials such that the work is scheduled to begin in a timeframe that allows these fence components to be available to be constructed during the project time and in conjunction with to the other proposed improvements.

PROJECT REQUIREMENTS

Upon completion of the demolition work by the City of Tupelo, the contractor shall immediately mobilize and begin work on the proposed improvements. More detailed descriptions of the work is included in the Project Pay Items information below.

The site conditions that should be expected by the contractor at the beginning of the project shall be typical of the conditions following the removal of existing pavement where the sub-grade is exposed. In-situ soil conditions are not known but it is expected that some excess excavation may be required by the contractor to remove unsuitable materials. Borrow excavation will be required to replace any unsuitable materials that are removed and to provide the grading for the proposed parking lot improvements. The contractor will prepare the areas as required for paving, curbs, garbage dumpster enclosure, fencing, etc. by placing borrow materials and crushed stone as required. Following the placement of the compacted borrow materials and rough grading, the Owner will review the grading and, if necessary, make any adjustments that may be required with respect to drainage prior to the finish grading. Following the finish grading, the contractor will place and compact the proposed crushed stone base material for curbs, concrete pavement/sidewalks and the dumpster enclosure pad, etc. The depths and placement of stone shall be consistent with the finished grading requirements and shall not alter the proposed drainage conditions for the site.

The contractor will be required to install curbs as represented on the Project Drawings. Following the completion of the proposed curbs, the contractor shall install the concrete pavement, including concrete sidewalks, as represented on the Project Drawings. The proposed striping shall be provided by the contractor following the requirements for curing of the concrete pavement.

The fence components may be installed by the contractor during the term of the contract time as required following the approval of the finished grading by the contractor.

PROJECT PAY ITEMS

1. **MOBILIZATION:** The contractor shall include a lump sum price for the delivery and removal of project equipment and materials that are required for the project. If necessary, other incidental materials, equipment, work, etc. that is not specifically defined or for which a specific pay item is not included may be absorbed into the lump sum price for this pay item. Payment shall be made in accordance with the format defined in the Specifications.
2. **EXCESS EXCAVATION:** The Contractor shall excavate/remove excess/unsuitable in-situ materials as required for proposed parking lot, sidewalk, curb, driveway, dumpster enclosure and drainage improvements as required on the Project Drawings and/or as directed by the Owner or Engineer and dispose of such materials off-site at no additional cost to the City. This work shall be paid for per CY of removed/disposed materials at the unit price included on the bid form as measured in the field. The average depth of excavation will be 6" – 12"; maximum depth will be 24". The City of Tupelo will provide a location for excess materials to be disposed of within the City Limits.

3. **BORROW EXCAVATION:** The Contractor shall provide and place approved select fill materials for proposed parking lot, sidewalk, curb & gutter, driveway, dumpster enclosure and drainage improvements as required on the Project Drawings and/or as directed by the Owner or Engineer. Borrow excavation shall include all labor, materials, equipment, etc. required to provide, place and compact the borrow materials and complete the work per the technical specifications and direction of the Owner or Engineer. This work shall be paid for per CY of in-place select fill material at the unit price included on the bid form as measured in the field. The average depth of excavation will be 6" – 12"; maximum depth will be 24".
4. **TOPSOIL / SOIL CONDITIONER:** The Contractor shall provide and place approved select fill top soil materials within the proposed curb islands for future landscaping by the City. The minimum depth of the topsoil shall be 6 inches from the finished surface. No topsoil shall be placed under paved or other structural improvements.
5. **CRUSHED STONE BASE COURSE:** The Contractor shall provide and place approved crushed limestone materials for proposed parking lot, sidewalk, curb & gutter, driveway, dumpster enclosure and drainage improvements as required on the Project Drawings and/or as directed by the Owner or Engineer. Crushed Stone Base Course shall include all labor, materials, equipment, etc. required to provide, place and compact the crushed limestone and complete the work per the technical specifications and direction of the Owner or Engineer. This work shall be paid for per CY of in-place material at the unit price included on the bid form as measured in the field. The contractor will place 6" of crushed stone base course under all concrete work, including concrete pavement, sidewalks, curbs and dumpster enclosure and compact the crushed stone per the density requirements included in the specifications.
6. **CONCRETE PAVEMENT, LIGHT DUTY:** The contractor shall provide the materials, labor and equipment to provide, install and finish the proposed concrete pavement and sidewalks as shown on the Project Drawings and as directed by the Engineer. The concrete utilized for this project shall be a 3000 psi mix provided and installed by the contractor in accordance with the MDOT specifications. The mix design shall be submitted by the contractor and approved by the City Engineer, Dennis Bonds, PE prior to beginning any work on the project for the specific roadway improvements. The minimum course thickness shall be 5" for concrete pavement, including areas identified as concrete sidewalks. Reinforcing steel shall be utilized in accordance with the specifications and the details represented on the Project Drawings. Concrete pavement shall be utilized for all areas for which the Project Drawings depict Concrete Pavement and Concrete Sidewalks. Concrete Pavement shall be paid for per square yard (SY) installed by the Contractor.
7. **CONCRETE PAVEMENT JOINT INSTALLATION:** The contractor shall provide the materials, labor and equipment to provide the proposed construction joints, expansion joints, etc. as required for the concrete pavement and sidewalks as represented on the Project Drawings and as directed by the Engineer. Concrete Pavement Joint Installation shall be paid for linear foot (LF) of joints installed by the Contractor.

8. 6" CONCRETE HEADER CURB: The contractor shall install 6" header curb to a minimum depth of 12" as directed adjacent to the paved parking lot at proposed concrete islands and adjacent to existing streets. Header curb areas shall be excavated to a minimum depth of 18" and placed atop 6" of crushed stone base course. 6" Concrete Header curb shall be paid for linear foot (LF) installed by the Contractor.
9. RECTANGULAR CONCRETE HEADER, MATCH EXISTING: The contractor shall install a rectangular concrete header adjacent to the existing sidewalk along Main St. from the Main St. entrance drive eastward to the project limits as represented on the Project Drawings. The proposed rectangular concrete header width and shape shall match the existing rectangular header that is located adjacent to the existing sidewalk west of the Main St. entrance drive. The depth of the rectangular header curb shall also match the existing section west of the entrance, but the height of the proposed rectangular concrete header may be adjusted in the field as required to meet the necessary finished grade requirements. The rectangular concrete header shall be placed to a minimum depth of 12". Rectangular concrete header areas shall be excavated to a minimum depth of 18" and placed atop 6" of crushed stone base course. Rectangular Concrete Header curb shall be paid for linear foot (LF) installed by the Contractor.
10. CONCRETE, CLASS B: The contractor shall provide and install the proposed concrete pad/footings/etc. as required for the brick masonry pilasters and the proposed dumpster enclosure as represented on the Project Drawings. No other items, including concrete pavement, header curb, concrete header curb, etc. shall be paid for under this pay item. The contractor shall be paid per CY of concrete installed for the brick pilaster pad/footings and the dumpster enclosure pad/footings ONLY as part of this pay item.
11. BRICK MASONRY FENCE PILASTERS: The contractor shall provide the materials, labor and equipment to erect and install brick masonry fence pilasters as represented on the Project Drawings. The structures shall be constructed to the dimensions shown on the details on Sheet C5 and shall be located adjacent to the existing sidewalk along Main St. as represented on the Project Drawings. The proposed pilasters shall reflect the same shape and shall match the appearance, including being painted to the same color, of the existing brick masonry fence pilasters located adjacent to the existing sidewalk along Main St. west of the ingress/egress driveway. This pay item shall include the concrete foundation, brick masonry construction, painting and other detail work required to match the appearance of the existing brick masonry fence structures. The brick masonry fence structures shall be paid per each (EA) one installed by the Contractor.
12. FABRICATED METAL FENCE PANELS: The contractor shall provide the materials, labor and equipment to fabricate, erect and install the proposed welded steel fence panels as represented on the Project Drawings. This shall include providing secure connection the existing / proposed brick masonry fence structures in order to complete the entire fence section as represented on the proposed drawings. The structures shall be constructed to the dimensions shown on the details on Sheet C5 and shall be located adjacent to the existing sidewalk along Main St. as represented on the Project Drawings. The proposed fabricated fence

panels shall reflect the same shape and shall match the appearance, including being finished to the same color, of the existing cast iron fence panels located adjacent to the existing sidewalk along Main St. west of the ingress/egress driveway. The pay item shall include the fabrication, erection, connection to brick masonry fence structures and other detail work required to match the appearance of the existing fence sections. The fabricated fence panels shall be paid per each (EA) one installed and connected to the proposed brick masonry pilasters by the Contractor.

13. **RELOCATED STEEL FENCE:** The contractor shall remove and relocate an existing short section of existing welded steel fence. As represented on the Project Drawings, there is an approximate 8 foot section of existing steel fenced connected to the existing brick pilaster immediately east of the existing driveway off of Main St. This section shall be detached from the existing pilaster and relocated to the southeast corner of the project area as shown on the drawings. This pay item shall include the materials, labor and equipment to remove and relocate the fence section per the Project Drawings. No other pay items will be utilized in connection with this work.
14. **DUMPSTER ENCLOSURE WITH GATE, PER PLANS:** The contractor shall be required to provide and install the materials as required to construct and complete a new enclosure for the proposed garbage dumpster. The proposed enclosure shall be constructed on a concrete foundation (paid for by CY under "Concrete, Class B" pay item) and shall consist of CMU walls with a painted brick masonry exterior. The painted brick masonry exterior shall match the color and other general characteristics of the brick masonry pilasters to provide a consistent look between these features. Concrete will be paid for separately. This pay item shall include payment for any required site preparation, reinforcing steel, CMU walls with painted brick masonry exterior, bollards, gate, etc. per the site layout drawing and detail drawing included on the Project Drawings. No other payment shall be made for any materials, work, etc. required to provide and install the proposed dumpster enclosure per the plans.
15. **4" PAINTED TRAFFIC STRIPE, CONTINUOUS YELLOW:** The contractor shall be required to provide and install traffic striping for the finished parking lot in the pattern represented on the Project Drawings. Continuous yellow painted lines, 4 inches in width, shall be striped to delineate the proposed parking spaces as shown on the site layout plan. If required, continuous yellow striping may be implemented to create hatch patterns and boundaries as required to provide the finished striping in accordance with the project requirements. The striping shall include the new sections of the parking lot upon completion of the concrete paving. The striping shall also include the re-striping of the existing concrete parking lot adjacent to the Tupelo Water & Light collection office. Traffic striping shall be implemented in accordance with the technical specifications, including the necessary waiting/curing period as required following the installation of the concrete pavement. Continuous yellow traffic striping shall be paid for per linear foot (LF) installed by the contractor.
16. **4" PAINTED TRAFFIC STRIPE, CONTINUOUS HANDICAP BLUE:** The contractor shall be required to provide and install traffic striping for the finished parking lot in the pattern represented on the Project Drawings. Continuous handicap blue painted lines, 4 inches in width, shall be striped to delineate the proposed handicap parking spaces and loading zones as shown on the site

layout plan. As required, continuous handicap blue striping shall be implemented to create hatch patterns and boundaries to provide the finished striping in accordance with the project requirements. The striping shall include the new sections of the parking lot upon completion of the concrete paving. The striping shall also include the re-striping of the existing concrete parking lot adjacent to the Tupelo Water & Light collection office. Traffic striping shall be implemented in accordance with the technical specifications, including the necessary waiting/curing period as required following the installation of the concrete pavement. Continuous handicap blue traffic striping shall be paid for per linear foot (LF) installed by the contractor.

17. PAINTED TRAFFIC SYMBOL, YELLOW LEGEND: The contractor shall be required to provide and install traffic symbols for the finished parking lot in the pattern represented on the Project Drawings. Painted traffic symbols shall be installed to delineate directional arrows, etc. as represented on the Project Drawings. The striping shall include the new sections of the parking lot upon completion of the concrete paving. The striping shall also include the re-striping of the existing concrete parking lot adjacent to the Tupelo Water & Light collection office. Traffic striping shall be implemented in accordance with the technical specifications, including the necessary waiting/curing period as required following the installation of the concrete pavement. Painted traffic symbol striping shall be paid for per square foot (SF) installed by the contractor.
18. STANDARD ADA HANDICAP PARKING SYMBOL, HANDICAP BLUE PAINT: The contractor shall be required to provide and install traffic symbols for the finished parking lot in the pattern represented on the Project Drawings. Painted traffic symbols shall be installed to delineate standard handicap symbols meeting all ADA requirements and dimensions, etc. as represented on the Project Drawings. The striping shall include the new sections of the parking lot upon completion of the concrete paving. The striping shall also include the re-striping of the existing concrete parking lot adjacent to the Tupelo Water & Light collection office. Traffic striping shall be implemented in accordance with the technical specifications, including the necessary waiting/curing period as required following the installation of the concrete pavement. Painted standard ADA Handicap parking symbol striping shall be paid for per each (EA) installed by the contractor.
19. TEMPORARY TRAFFIC CONTROL: The contractor shall be required to erect temporary traffic control measures in order to complete the proposed parking lot improvements. The contractor shall maintain ingress/egress points to the existing parking lot section adjacent to the Tupelo Water & Light Collection Office. The contractor, as part of the traffic control, shall provide barricades between the project construction area and the existing parking lot area that will remain accessible for traffic and parking. The contractor shall erect all traffic control devices prior the beginning of project activities in order to protect pedestrians, workers and vehicular traffic. Should it be necessary to temporarily close access to the existing portion of the parking lot that will remain open, or to restrict ingress / egress of an open driveway, the contractor shall coordinate with the City Engineer and the Owner shall approve the closure in writing prior to such closures being implemented by the contractor. All temporary traffic control signage

and devices shall be in accordance with the Specifications and the Manual on Uniform Traffic Control Devices (MUTCD), latest edition.

20. TEMPORARY EROSION CONTROL: The contractor shall be required to erect temporary erosion control measures in order to complete the proposed parking lot improvements. The contractor shall install silt fence, or other erosion control measures, to ensure that sediment and/or other materials are not deposited off of the project site. The contractor shall be responsible for providing an erosion control plan, stormwater pollution prevention plan (SWPPP) and shall complete a Small Construction Notice of Intent (SCNOI) as required by the MDEQ prior to the beginning of an excavation or disturbance of soils. The contractor shall be responsible for inspections and maintenance of erosion control measures for the duration of the project

*****END OF SECTION*****

SECTION D
BID FORM AND BIDDERS CERTIFICATES

PROPOSAL

Proposal of Century Construction Group, Inc. (hereinafter called "BIDDER"), organized and existing under the laws of the State of Mississippi doing business as a (corporation, partnership, limited liability company, or individual) to **TUPELO, MS**, (hereinafter called "OWNER"). In compliance with your advertisement for Bids, BIDDER, hereby proposes to perform all WORK for construction of

“COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS”

in strict accordance with the CONTRACT DOCUMENTS, within the time set forth herein, and at the prices stated below. By submission of the BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been developed independently, without consultation, communication or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in a written "NOTICE TO PROCEED" and to fully complete the Project within **30** consecutive calendar days thereafter. BIDDER further agrees to pay as liquidated damages, the sum of **\$300** for each consecutive calendar day thereafter as provided for elsewhere in these CONTRACT DOCUMENTS.

BIDDER ACKNOWLEDGES receipt of the following ADDENDA:

NUMBER: _____ DATE: _____

NUMBER: _____ DATE: _____

NUMBER: _____ DATE: _____

NUMBER: _____ DATE: _____

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to this bid.

BIDDER understands that the quantities mentioned below are approximate only and are subject to either increase or decrease, and hereby proposes to perform any increased or decreased quantities of work at the Unit Price Bid.

In accordance with the requirements of the Plans, Specifications and Contract Documents, BIDDER proposes to furnish all necessary materials, equipment, labor, tools and other means of construction and to construct the Project in accordance with the Contract Documents within the specified Contract Time for the following Unit Prices specified.

BIDDER further agrees to execute the contract agreement as bound herein within ten (10) days after receipt of contract forms from the OWNER.

BIDDER agrees to pay as liquidated damages the amount provided herein for each consecutive calendar day after the Contract completion date specified in a written "NOTICE TO PROCEED" that he fails to complete the work unless the Contract Time is extended by a written Change Order.

BIDDER also proposes to execute a Performance Bond and a Payment Bond, as shown in the Specifications, each in an amount of not less than **one hundred percent (100%)** of the total of the Base Bid. These Bonds shall not only serve to guarantee the completion of the work on the BIDDERS part, but also to guarantee the excellence of both workmanship and materials until the work is finally accepted.

BIDDER encloses a Bid Bond or Certified Check for 5% of Base Bid Amount DOLLARS (\$_____) and hereby agree that in case of failure to execute the Contract and furnish the required Bonds within (10) days after the Receipt of Contract Forms, the amount of this Certified Check or Bid Bond will be forfeited to the OWNER, as liquidated damages arising out of his failure to execute the Contract as proposed.

It is understood that in case BIDDER is awarded the work, the Certified Check or Bid Bond submitted as Bid security will be returned as stipulated in the Specifications.

Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provision of the Equal Opportunity Clause set forth in the Federal Requirements, if applicable.

The low BIDDER shall supply the names and address of major MATERIAL SUPPLIERS AND SUBCONTRACTORS when required to do so by the OWNER.

Inspection trips for prospective BIDDERS will be coordinated thru OWNER prior to submission of proposal.

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices or base bid amount: **SEE PAGE D-4 FOR BID ITEMS.**

NOTES:

1. Unit price amounts are to be shown in figures where indicated. Where a discrepancy in the unit price and the extension of any items occurs, the unit price will govern.
2. Unit prices shall include all labor, materials, bonding, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.
3. Any erasure, change or alteration of any kind must be initialed by the BIDDER.
4. Bid prices shall include sales tax and all other applicable taxes and fees.
5. Any item of work not specified on the Proposal as a separate pay item or indicated as an absorbed cost in a pay item but which is incidental to completion of the work shall be considered as an absorbed cost with full compensation included in the unit price bid for the particular item involved.
6. OWNER reserves the right to award any combination of base and additive alternate bids (if any) it deems advantageous and in the event that all specified bid item units are lump sum (LS), the OWNER reserves the right to delete any such item or combination of such items from the project. The OWNER further reserves the right to delete any item or items desired from the Bid Schedule after the Contract has been awarded. Any deletions, if any made, shall be by Change Order and BIDDER hereby agrees to accept such Change Orders.

SECTION D: BID FORM - BID NO. 2022-012PW
CITY OF TUPELO, MISSISSIPPI
ROADWAY SURFACE TREATMENT IMPROVEMENTS
FEBRUARY, 2022

ITEM NO.	DESCRIPTION	UNIT	QNTY.	UNIT COST	TOTAL COST
1	MOBILIZATION	LS	1	\$52,000.00	\$52,000.00
2	EXCESS EXCAVATION	CY	30	\$75.00	\$2,250.00
3	BORROW EXCAVATION	CY	300	\$28.00	\$8,400.00
4	TOPSOIL / SOIL CONDITIONER	CY	20	\$93.00	\$1,860.00
5	CRUSHED STONE BASE COURSE	CY	550	\$93.00	\$51,150.00
6	CONCRETE PAVEMENT, LIGHT DUTY	SY	3,010	\$77.50	\$233,275.00
7	CONCRETE JOINT INSTALLATION	LF	1,000	\$9.50	\$9,500.00
8	6" CONCRETE HEADER CURB	LF	900	\$48.00	\$43,200.00
9	RECTANGULAR CONCRETE HEADER, Match Existing	LF	120	\$77.00	\$9,240.00
10	CONCRETE, CLASS B	CY	6	\$2,060.00	\$12,360.00
11	BRICK MASONRY FENCE PILASTERS	EA	8	\$2,500.00	\$20,000.00
12	FABRICATED METAL FENCE	LF	112	\$200.00	\$22,400.00
13	RELOCATED STEEL FENCE	LF	8	\$190.00	\$1,520.00
14	DUMPSTER ENCLOSURE WITH GATE, PER PLANS	LS	1	\$26,000.00	\$26,000.00
15	4' PAINTED TRAFFIC STRIPE, CONTINOUS YELLOW	LF	1500	\$1.00	\$1,500.00
16	4' PAINTED TRAFFIC STRIPE, CONTINOUS H.C. BLUE	LF	310	\$1.00	\$310.00
17	PAINTED TRAFFIC SYMBOL, YELLOW LEGEND	SF	110	\$13.50	\$1,485.00
18	STD. ADA H.C. PARKING SYMBOL, H.C. BLUE PAINT	EA	4	\$113.00	\$452.00
19	TEMPORARY TRAFFIC CONTROL	LS	1	\$10,000.00	\$10,000.00
20	TEMPORARY EROSION CONTROL	LS	1	\$15,000.00	\$15,000.00
GRAND TOTAL					\$521,902.00

SECTION D: BID FORM - BID NO. 2022-012PW
CITY OF TUPELO, MISSISSIPPI
ROADWAY SURFACE TREATMENT IMPROVEMENTS
FEBRUARY, 2022

IN ACCORDANCE WITH THE PUBLISHED BID NOTICE AND THE CONTRACT DOCUMENTS PROVIDED BY THE CITY FOR THE REFERENCED BID, THE UNDERSIGNED DOES HEREBY AGREE TO FURNISH THE DEFINED MATERIALS, SUPPLIES AND SERVICES TO THE CITY OF TUPELO, MISSISSIPPI FOR THE PRICES AS SPECIFIED HEREIN. BIDDER AGREES TO SPECIFIED PRICES TO BE PROVIDED TO THE CITY UNTIL THE CLOSEOUT OF THE PROJECT.

RESPECTFULLY SUBMITTED BY: Century Construction Group, Inc.
(PLEASE PRINT)

SIGNATURE: *David Horton*

NAME AND TITLE: David Horton- Vice President
(PLEASE PRINT)

ADDRESS: P.O. Box 1366 Tupelo, MS 38802

PHONE NUMBER: 662-844-3331



D-4b

CORPORATE CERTIFICATE

(To be executed if BIDDER is a Corporation)

I, Christy Bolen certify that I am the Secretary of the Corporation named as CONTRACTOR in the foregoing Proposal; that David Horton who signed said Proposal on behalf of the CONTRACTOR, was then Vice President of said Corporation; that said Proposal was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

Name: Christy Bolen

Title: Contract Administrator

Signature: *Christy Bolen*

Date: 04/28/2022



PARTNERSHIP CERTIFICATE

(To be executed if BIDDER is a Partnership)

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 2022, before me personally appeared _____, known to be and known by me to be the person who executed the above instrument, who being by me first duly sworn, did depose and say that he is general partner in the firm of:

_____; That said firm consists of himself and ; and that he executed the foregoing instrument for and on behalf of said firm for the uses and purposes stated herein.

Signature _____

Title _____

(SEAL)

Sworn before me this __ day of _____, 2022.

_____, Notary Public

My commission expires _____

LIMITED LIABILITY COMPANY CERTIFICATE

(To be executed if BIDDER is a LLC)

I, the undersigned _____, hereby certify that I am the Manager of _____ (the "Company") or if the Company does not have a Manager, a Member of the Company with full power and authority to bind the Company; that _____ who executed the Proposal on behalf of the Company is _____ of the Company with full power and authority to execute same on behalf of the Company, and that the Proposal and the Contract, if awarded to the Company, are within the powers and authority of the Company.

Signature _____

Title _____

(SEAL)

Sworn before me this ___ day of _____, 2022.

_____, Notary Public

My commission expires _____

NONRESIDENT BIDDER CERTIFICATE
(to be executed if a BIDDER is a nonresident)

I, _____, hereby certify that the CONTRACTOR,
_____, is domiciled in the State of _____
and (check and complete one):

(___) attached is a copy of the State of _____'s current law pertaining to the
treatment of nonresident CONTRACTORS. Paragraph ____, page ____ of said law grants
resident CONTRACTORS a ____ percent preference over nonresident CONTRACTORS for
similar projects.

(___) the State of _____ has no current law pertaining to the treatment of
nonresident contractors.

(___) I claim "resident contractor" status based upon having been qualified to do business in this
state and having maintained a permanent full-time office in the State of Mississippi for two
(2) years prior to January 1, 1986. Proof of such claim must be submitted and approved
before contract is signed.

Signature _____

Title _____

(SEAL)
Sworn before me this __ day of _____, 2022.

_____, Notary Public

My commission expires _____

**NON-COLLUSION AFFIDAVIT
(TO BE EXECUTED IN DUPLICATE)**

STATE OF MISSISSIPPI
COUNTY OF Lee

I, David Horton
(name of person signing affidavit)

individually, and in my capacity as Vice President
(title)

of Century Construction Group, Inc.
(name of firm, partnership, limited liability company, or corporation.)

being duly sworn, on oath do depose and say as follows:

(a) That Century Construction Group, Inc., Bidder on the "COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS" for **Tupelo, MS**, has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

Signature *David Horton*
(David Horton)

Title Vice President

(SEAL)
Sworn before me this 28th day of April, 2022.
Christy Boelen, Notary Public
My commission expires 02/02/2026



NOTE: FAILURE TO PROPERLY SIGN AND NOTARIZE THIS AFFIDAVIT WILL DISQUALIFY THE BID.

**NON-COLLUSION AFFIDAVIT
(TO BE EXECUTED IN DUPLICATE)**

STATE OF MISSISSIPPI
COUNTY OF Lee

I, David Horton
(name of person signing affidavit)

individually, and in my capacity as Vice President
(title)

of Century Construction Group, Inc.
(name of firm, partnership, limited liability company, or corporation.)

being duly sworn, on oath do depose and say as follows:

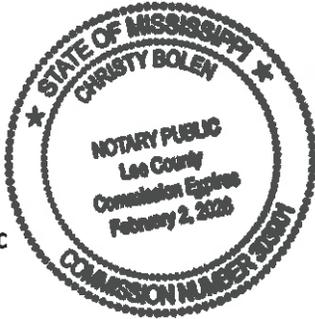
(a) That Century Construction Group, Inc., Bidder on the "COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS" for **Tupelo, MS** has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

Signature *David Horton*
(David Horton)

Title Vice President

(SEAL)
Sworn before me this 28th day of April, 2022.
Christy Bolen, Notary Public
My commission expires 02/02/2026



NOTE: FAILURE TO PROPERLY SIGN AND NOTARIZE THIS AFFIDAVIT WILL DISQUALIFY THE BID.

SECTION E

BID BOND

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That Century Construction Group, Inc.
(Name of Contractor)

705 Robert E. Lee Drive, Tupelo, MS 38801
(Address of Contractor)

a Corporation hereinafter called "Principal", and
{Corporation, Partnership, Limited Liability Company or Individual}

Travelers Casualty and Surety Company of America hereinafter called
(Name of Surety) "Surety",

are held and firmly bound unto **TUPELO, MS**, hereinafter called "**OWNER**" in the penal sum of 5% of Total Bid, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents. Signed, this the 28th day of April, 2022. The Condition of the above obligation is such that whereas the Principal has submitted to the **CITY OF TUPELO, MS** a certain BID, attached hereto and hereby made a part thereof to enter into a contract in writing, for the construction of:

"COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS"

NOW, THEREFORE,

- (a) If said BID shall be rejected, or,
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract on the Contract form as attached hereto (properly completed in accordance with said BID) and shall furnish BONDS for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection herewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void, otherwise the same shall remain in effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these present to be signed by their officers, the day and year first set forth above.

Century Construction Group, Inc.

(L.S.)

Travelers Casualty and Surety Company of America

Principal

Surety

David E. Horton

Amanda Jean Charfauros

By:

By: Amanda Jean Charfauros, Attorney-in-Fact
Resident Mississippi Agent
Fisher Brown Bottrell Insurance, Inc.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.



*** END OF SECTION ***



Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **AMANDA JEAN CHARFAUROS JACKSON** of **Mississippi**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 21st day of April, 2021.



State of Connecticut

City of Hartford ss.

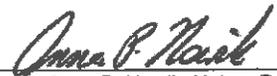
By: 
Robert L. Raney, Senior Vice President

On this the 21st day of April, 2021, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2026




Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 28th day of April, 2022.




Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the name of the bond to which this Power of Attorney is attached.

SECTION F

CONTRACT

CONTRACT

THIS AGREEMENT, made this the _____ day of _____, 2022, by and between **TUPELO, MISSISSIPPI** hereinafter called "OWNER" and _____ doing business as (an Individual), (a Partnership), (a Limited Liability Company), or (a Corporation) hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of "**COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS**" hereinafter called "PROJECT".
2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.
3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within **10** calendar days after the date of the NOTICE TO PROCEED and will complete the PROJECT within **30** calendar days, unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.
4. The CONTRACTOR agrees to perform all of the work described in the CONTRACT DOCUMENTS, and comply with the terms therein for the sum of \$ _____ or as shown in the BID Schedule.
5. The term "CONTRACT DOCUMENTS" means and includes the following:
 - A. This Agreement
 - B. Instruction to Bidders
 - C. Signed Copy of Proposal Form and Bidder's Certificate
 - D. Executed Non-Collusion Form and Compliance Statements
 - E. Executed Bid Bond
 - F. Contract
 - G. Executed Performance and Payment Bond
 - H. NSPE General Conditions
 - I. Special Contract Provisions
 - J. SPECIFICATIONS issued by **DABBS CORPORATION** and dated **FEBRUARY 2022**.
 - K. ADDENDA:
 No. ____ Dated _____
 No. ____ Dated _____
 No. ____ Dated _____
 No. ____ Dated _____
 - L. All federal government conditions, specifications, regulations and requirements bound herein.

6. The CONTRACTOR agrees to abide by the following consequences for failure to complete the project within the time specified in the CONTRACT DOCUMENTS:

- A. LIQUIDATED DAMAGES - CONTRACTOR shall pay to OWNER for each and every calendar day that he shall be in default in attaining Completion of the Work within the time stipulated the sum of \$ 300.00 as liquidated damages. The CONTRACTOR shall be liable for the continued assessment of liquidated damages of \$300.00 for each calendar day that he shall be in default in completing the Work within the stipulated time as provided herein. Since the OWNER’S losses are due to the CONTRACTOR’S delay and are not readily ascertainable, the amount provided herein for liquidated damages constitutes agreed damages and not a penalty.
- B. INDEMNIFICATION - In addition to payment of the above liquidated damages, CONTRACTOR shall fully indemnify and hold harmless the OWNER, the ENGINEER and their officers, personnel, and agents from and against: (1) any and all fines, civil penalties, and assessments levied by the State of Mississippi Office of Pollution Control, State of Mississippi Bureau of Environmental Health or any federal or state court for failure to meet, perform, or comply with any part of the time schedule as defined in the Contract Documents, and (2) any and all claims, damages, losses, expenses, liabilities, actions, judgments, and decrees of any and every nature whatsoever in any manner caused by, resulting from, or arising out of such failure.
- C. RIGHT OF SET-OFF - The OWNER, in addition to its other remedies under this Contract and in law and in equity, may deduct from monies which become due the CONTRACTOR under this Contract any unpaid amounts which become due to the OWNER under any of the foregoing provisions.

7. The OWNER will pay to the CONTRACTOR in the manner and at such times set forth in the General Conditions such amount as required by the CONTRACT DOCUMENTS. The OWNER shall retain five percent (5%) of the amount of each payment until final completion and acceptance of all work covered by the CONTRACT DOCUMENTS unless otherwise mutually agreed.

8. The CONTRACTOR agrees to allow the OWNER or a duly authorized representatives thereof, access to books, documents, papers and records of the CONTRACTOR which are directly pertinent to the project which is the subject of this Contract, for the purpose of making audits, examinations, excerpts and transcriptions, and CONTRACTOR agrees to insert an identical access to records clause into all subcontracts.

9. The CONTRACTOR shall be held responsible for forfeiture of monies in the event that an audit indicates his failure to keep adequate records, including change orders, force accounts and payroll records.

10. Attached hereto and made a part of this Contract is a Performance and Payment Bond, executed by a Surety Company doing business in the State of Mississippi, in the sum of:

(\$ _____) _____
(not less than one hundred percent of Contract amount)

11. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement in 3 copies each of which shall be deemed an original on the date first above written.

CITY OF TUPELO / OWNER

BY: _____
NAME: _____
TITLE: _____

ATTEST:

BY: _____
NAME: _____
TITLE: _____

(SEAL)

CONTRACTOR

BY: David Horton
NAME: David Horton
TITLE: Vice President

ATTEST:

BY: Dylan Shook
NAME: Dylan Shook
TITLE: Project Manager



SECTION G
PERFORMANCE & PAYMENT BOND

SECTION G
PERFORMANCE AND PAYMENT BOND

CONTRACT BOND FOR _____

LOCATED IN THE COUNTY OF _____, STATE OF MISSISSIPPI,

Know all men by these presents: that we, _____
(Contractor)

(hereinafter "Principal"), a _____

residing at _____ in the State of _____

and _____
(Surety)

residing at _____ in the State of _____

authorized to do business in the State of Mississippi, under the laws thereof, as surety, are held and firmly bound unto the CITY OF TUPELO, MISSISSIPPI (hereinafter "OWNER"), in the sum of

(\$ _____) Dollars, lawful money of the United States of

America, to be paid to it for which payment well and truly to be made, we bind ourselves, our heirs, administrators, successors, or assigns jointly and severally by these presents.

The conditions of this bond are such, that whereas the said Principal, has (have) entered into a contract with the OWNER, bearing the date of _____ day of _____ A.D. _____ hereto annexed, for the construction of certain project(s) in the State of Mississippi as mentioned in said contract in accordance with the Contract Documents therefor, on file in the offices of the OWNER.

Now therefore, if the above bounden Principal in all things shall stand to and abide by and well and truly observe, do keep and perform all and singular the terms, covenants, conditions, guarantees and agreements in said contract, contained on his (their) part to be observed, done, kept and performed and each of them, at the time and in the manner and form and furnish all of the material and equipment specified in said contract in strict accordance with the terms of said contract which said plans, specifications and special provisions are included in and form a part of said contract and shall maintain the said work contemplated until its final completion and acceptance as specified in the approved specifications, and save harmless said OWNER from any loss or damage arising out of or occasioned by the negligence, wrongful or criminal act, overcharge, fraud, or any other loss or damage whatsoever, on the part of said principal (s), his (their) agents, servants, or employees in the performance of said work or in any manner connected therewith, and shall be liable and responsible in a civil action instituted by

the OWNER at the instance of any officer of the OWNER authorized in such cases, for double any amount in money or property, the OWNER may lose or be overcharged or otherwise defrauded of, by reason of wrongful or criminal act, if any, of the Contractor(s), his (their) agents or employees, and shall promptly pay the said agents, servants and employees and all persons furnishing labor, material, equipment or supplies therefor, including premiums incurred, for Surety Bonds, Liability Insurance, and Workmen's Compensation Insurance; with the additional obligation that such Contractor shall promptly make payment of all taxes, licenses, assessments, contributions, damages, any liquidated damages which may arise prior to any termination of said principal's contract, any liquidated damages which may arise after termination of the said principal's contract due to default on the part of said principal, penalties and interest thereon, when and as the same may be due this state, or any county, municipality, board, department, commission or political subdivision: in the course of the performance of said work and in accordance with Sections 31-5-51 et seq. Mississippi Code of 1972, and other State statutes applicable thereto, and shall carry out to the letter and to the satisfaction of the OWNER, all, each and every one of the stipulations, obligations, conditions, covenants and agreements and terms of said contract in accordance with the terms thereof and all of the expense and cost and attorney's fee that may be incurred in the enforcement of the performance of said contract, or in the enforcement of the conditions and obligations of this bond, then this obligation shall be null and void, otherwise to be and remain in full force and virtue.

(Contractors) Principal

Surety

By _____

By _____
(Signature) Attorney in Fact

Address: _____

Title _____
(Contractor's Seal)

(Printed) Mississippi Agent

(Signature) Mississippi Agent

Address: _____

(Surety Seal)

Mississippi Insurance ID Number

END OF SECTION

SECTION H
CERTIFICATE OF SUFFICIENCY

CERTIFICATE OF SUFFICIENCY

I, _____, Chief Legal Officer for **TUPELO, MISSISSIPPI** do hereby certify that I have examined the agreement, contract bonds and evidence of insurance offered by the Contractor for the **“COURT STREET DOWNTOWN PARKING LOT IMPROVEMENTS”** project and I am of the opinion that each of the aforesaid documents is adequate and sufficient and has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said documents on behalf of the respective parties named thereon; and that the foregoing documents constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions and provisions thereof.

(Signature)

Name: _____

Date: _____

SECTION I
STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is *evidence* that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents; or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
- c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 Copies of Documents

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 Starting the Work

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 2. a preliminary Schedule of Submittals; and
 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 Preconstruction Conference; Designation of Authorized Representatives

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 Initial Acceptance of Schedules

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 Reference Standards

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies:

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 - 1. A Field Order;
 - 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
 - 3. Engineer's written interpretation or clarification.

3.05 Reuse of Documents

- A. Contractor and any Subcontractor or Supplier shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 - 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 Electronic Data

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer’s Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner’s obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer’s findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 Underground Facilities

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 Reference Points

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members,

partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 Certificates of Insurance

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 Contractor's Insurance

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
 2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
 4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 Owner's Liability Insurance

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
 - C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
 - D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
 - E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 Waiver of Rights

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary

Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in

accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 Supervision and Superintendence

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 Labor; Working Hours

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 Substitutes and "Or-Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 - 1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a

proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:

- a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
- 3) will identify:
- a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 Concerning Subcontractors, Suppliers, and Others

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 Patent Fees and Royalties

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 Permits

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Shop Drawings and Samples

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

6.20 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 Delegation of Professional Design Services

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 Coordination

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 Legal Relationships

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER’S RESPONSIBILITIES8.01 Communications to Contractor

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 Replacement of Engineer

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 Furnish Data

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 Pay When Due

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 Lands and Easements; Reports and Tests

A. Owner’s duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 Insurance

A. Owner’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 Change Orders

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 Inspections, Tests, and Approvals

A. Owner’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 Limitations on Owner's Responsibilities

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 Undisclosed Hazardous Environmental Condition

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 Evidence of Financial Arrangements

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 Compliance with Safety Program

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 Owner's Representative

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 Visits to Site

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 Authorized Variations in Work

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 Rejecting Defective Work

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 Shop Drawings, Change Orders and Payments

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 Determinations for Unit Price Work

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 Decisions on Requirements of Contract Documents and Acceptability of Work

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 Limitations on Engineer's Authority and Responsibilities

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 Compliance with Safety Program

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 Unauthorized Changes in the Work

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 Notification to Surety

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 Claims

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such

losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:*
1. Contractor agrees that:
 - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance:*
1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
 1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 Delays

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 Owner May Stop the Work

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute

resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored

elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or

- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

- 1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or

- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety,

and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 Partial Utilization

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 Final Inspection

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 Owner May Terminate For Convenience

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 Computation of Times

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 Controlling Law

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 Headings

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SECTION J
PROJECT SUPPLEMENTAL GENERAL CONDITIONS

SECTION J.1
PROJECT SPECIAL CONDITIONS

SECTION J.1
SPECIAL CONDITIONS

1-01 GENERAL

- A. The following Special Conditions consist of special requirements which shall apply to this project and to the CONTRACTOR executing the work.
- B. The information contained in these special conditions and technical specifications shall supersede information contained in NSPE, EDA, CDBG or SRF General Conditions if any found elsewhere herein.
- C. OWNER shall furnish to CONTRACTOR up to three (3) copies (unless otherwise specified in the General Requirements) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.
- D. Protect the finished work from damage and loss resulting from carelessness or by reason of the elements and from all other causes until the entire work is completed and accepted. The work is entirely at the CONTRACTOR'S risk. The OWNER assumes no responsibility or obligation whatsoever for damage or loss to the work.
- E. At all times protect existing work and adjacent property. Correct all damage thereto caused by construction operations of the CONTRACTOR'S employees at the expense of the CONTRACTOR, and to the complete satisfaction of the OWNER and ENGINEER.
- F. **CONSTRUCTION SAFETY IS A PROJECT REQUIREMENT.** The CONTRACTOR shall be responsible for providing Safety equipment and or methods necessary for the safe prosecution of the work by his personnel and the personnel of any sub-contractors, as well as providing safe access and site conditions to all elements of the project for the OWNER, ENGINEER, and their representatives. Such safety requirements shall meet guidelines as contained in OSHA and U.S. Department of Health and Human Services (National Institute for Occupational Safety and Health) (NIOSH) publication sections relative to the work contemplated herein.
- G. **PAYMENTS TO CONTRACTOR:** The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions, such amounts as required by the Contract Documents. The OWNER shall retain five percent (5%) of the amount of each progress payment until final completion and acceptance of all work covered by the Contract Documents unless otherwise mutually agreed.

1-02 PUBLIC SAFETY AND CONVENIENCE

- A. The CONTRACTOR shall at all times so conduct his work as to ensure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work, and to ensure the protection of persons and property in a manner satisfactory to the OWNER and ENGINEER.
- B. All work on existing highways, roads or streets, shall be in a manner to assure the least practicable interference with the public use of the facility. The CONTRACTOR shall use reasonable care and precaution to avoid accidents, damage, unnecessary delay or interference with traffic and provide competent flaggers when necessary to insure maximum public safety.

1-03 CONSTRUCTION STAKES AND GRADES

- A. The ENGINEER has provided a base line from which all layout is to be done. Preservation of reference points will be the responsibility of the CONTRACTOR. The CONTRACTOR must provide all grades, stakes, string lines, and other control work necessary for completion of the project in accordance with the requirements of the Specifications and Drawings.
- B. **No changes to grades will be made without the approval of the ENGINEER.**

1-04 EXISTING WATER, SEWER, ELECTRIC GAS AND UNDERGROUND TELEPHONE FACILITIES

- A. Existing water, sewer, gas, electricity, television cable, and buried telephone cable facilities shown on the drawings are approximate locations. The CONTRACTOR is required to coordinate his work with the representative of the respective utility company and protect all other adjacent structures, utilities, and work against damage or interruption of services. Damage which may result from failure of the CONTRACTOR to observe such precautions is the responsibility of the CONTRACTOR.
- B. **The OWNER shall be held harmless of the cost of repairing damage to public utilities.**

1-05 UTILITIES

- A. Water, electricity, gas or other utilities required on the site of the work by the CONTRACTOR must be arranged for by him and furnished at his expense.
- B. Required temporary utility installations are subject to the approval of the ENGINEER and are to be maintained and removed by the CONTRACTOR at his expense prior to completion of the construction work.

1-06 TEMPORARY STORAGE

- A. If materials are stored on the site of the work, each CONTRACTOR shall provide and maintain on the premises, where directed, water-tight storage sheds for the storage of materials that would be subject to damage by the weather.
- B. The CONTRACTOR shall be responsible for security of material storage sites.

1-07 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

- A. The CONTRACTOR will execute and provide to the ENGINEER at the Pre-construction Conference a compliance statement where required.
- B. Such compliance form shall be provided by the ENGINEER.

1-08 LEAD BASED PAINT

- A. Use of lead based paint on the project is prohibited.

1-09 TEMPORARY TOILETS

- A. Provide and maintain temporary toilets as necessary for use of workmen. Locate toilets in locations acceptable to the OWNER.
- B. Toilets shall meet requirements of the State Health Department and any local codes.

1-10 TEMPORARY JOB OFFICE FOR ENGINEER

- A. None required for this Contract.

1-11 WAGE RATES

- A. None required for this Contract.

1-12 PROJECT SIGN

- A. None required for this Contract.

1-13 TESTING LABORATORY SERVICES

- A. Scope: The CONTRACTOR will employ and pay for the services of an independent laboratory to perform specified services. Employment of a testing laboratory shall in no way relieve CONTRACTOR of his obligation to perform work in accordance with the contract and/or Technical Specifications.

1-14 PRE-CONSTRUCTION CONFERENCE

- A. Prior to commencement of construction, a pre-construction conference will be scheduled with the date, time and location of the meeting to be established by the ENGINEER.
- B. The ENGINEER will prepare an agenda and distribute advance copies to each participant. The ENGINEER will also prepare and complete the minutes of the meeting and distribute same to all participants.
- C. Prior to the pre-construction conference, CONTRACTOR shall submit to ENGINEER an estimated progress schedule, in the form of a bar chart, indicating the starting and completion dates of the various stages of the Work along with anticipated earnings, and a preliminary schedule of Shop Drawings submissions. The ENGINEER shall review and return this schedule or require revisions thereto within fourteen (14) days of its submittal. If there is more than one CONTRACTOR involved in a Project the responsibility for coordinating the Work of all CONTRACTORS shall be as provided in the Special Conditions. Updated progress schedules will be required on a monthly basis at the time of submittal of the CONTRACTOR'S monthly progress pay request.
- D. The above schedules will be reviewed during the pre-construction conference to establish procedures for handling Shop Drawings and other submissions and for processing Application for Payment, and to establish a working understanding between the parties as to the Project requirements.
- E. Present at the conference will be the OWNER or his representative, ENGINEER, Resident Project Representative, CONTRACTOR, his Superintendent, and major Subcontractors.

SECTION J.2
INSTRUCTION FOR BONDS

**SECTION J.2
INSTRUCTIONS FOR BONDS**

1-01 GENERAL

- A. The following instructions and requirements for Bonds shall apply to this Project.

1-02 SURETY

- A. The surety on each bond must be a responsible surety company, qualified to do business in Mississippi, and shall be satisfactory to the OWNER.

1-03 NAME

- A. The name, including full legal name, and residence of each individual party to the bond shall be inserted in the body thereof, and each such party shall sign the bond with their usual signature on the line opposite the seal.

1-04 PARTNERSHIPS

- A. If the principals are partners, their individual names will appear in the body of the bond with the recital that they are partners composing a firm, naming it, and shall have all the partners of the firm execute the bond as individuals.
- B. The signature of a witness shall appear in the appropriate place, attesting to the signature of each individual party to the bond.

1-05 CORPORATIONS

- A. If the principal or surety is a corporation, the name of the State in which incorporated shall be inserted in the appropriate place in the body of the bond, and said instrument shall be executed and attested under the corporate seal as indicated in the form.
- B. The official character and authority of the person or persons executing the bond for the principal, if a corporation, shall be secretary or assistant secretary according to the form attached hereto. In lieu of such certificate, there may be attached to the bond copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

1-06 LIMITED LIABILITY COMPANIES

- A. If the principal is a limited liability company, the name of the state under which the limited liability company is organized shall be inserted in the appropriate place in the body of the bond, and said instrument shall be executed and attested.
- B. The bond shall be executed by a Manager of the limited liability company if managed by one or more Managers, or by a Member if managed by one or more Members. The bond shall disclose the capacity in which executed by the Member or Manager.

1-07 DATE

- A. The date shown on these bonds **must not be** prior to the date of the contract in connection with which they are given.

SECTION J.3
SPECIAL PROVISIONS

**SECTION J.3
SPECIAL PROVISIONS**

1-01 LOCATION AND DESCRIPTION

- A. The work required under this Contract includes the furnishing of all materials, tools, equipment, labor and incidentals necessary for the construction of the project and all related items required by the Drawings and Specifications.
- B. The summary of work as described above is a general description of the project and responsibilities of the CONTRACTOR and in no way supersedes the specific requirements of the Contract Documents.

1-02 TEMPORARY CONTROLS

- A. The CONTRACTOR shall provide and maintain methods, equipment, and temporary construction, as necessary to provide control over environmental conditions at the construction site and adjacent areas. Physical evidence of temporary facilities shall be removed after completion of the work.
- B. Noise Control
 - 1. The CONTRACTOR'S vehicles and equipment shall be such as to minimize noise to the greatest degree practical. Noise levels shall conform to the latest OSHA standards and in no case will noise levels be permitted which interfere with the work of the City or others.
- C. Water Control
 - 1. The CONTRACTOR shall provide methods to control surface water and water from excavations and structures to prevent damage to the work, the site, or adjoining properties, including beaver control on-site and adjacent thereto.
 - 2. Fill, grading and ditching shall be controlled to direct water away from excavations, pits, tunnels and other construction areas, and to direct the runoff course so as to prevent any erosion, damage or nuisance.
 - 3. The CONTRACTOR shall provide, operate and maintain equipment and facilities of adequate size to control surface water.
 - 4. Drainage water shall be disposed of in a manner to prevent flooding, erosion, or other damage to any portion of the site or to adjoining areas and in conformance with all environmental requirements.

D. Pollution Control

1. The CONTRACTOR shall provide methods, means and facilities required to prevent contamination of soil, water or atmosphere by the discharge of noxious substances from construction operations.
2. The CONTRACTOR shall provide equipment and personnel, perform emergency measures required to contain any spillage, and remove contaminated soils or liquids. The contaminated earth will be removed and disposed of offsite, and replaced with suitable compacted fill and topsoil at no additional cost to the OWNER.
3. The CONTRACTOR shall prevent disposal of wastes, effluents, chemicals, or other such substances adjacent to streams, or in sanitary or storm sewers. All sewage, oil and refuse generated during the course of the work shall not be discharged into any watercourses adjacent to the job site.

E. Erosion Control

1. The CONTRACTOR shall solicit and obtain the necessary permitting related to storm water quality and erosion control as required by law based on the work being completed as part of the construction activities. If required, the CONTRACTOR shall coordinate with local, state and/or federal agencies as necessary to obtain the needed permitting prior to the commencement of construction activities. This includes, but is not limited to, local building permits, local storm water permits, MDEQ Large Construction Notice of Intent (LCNOI) with supporting documentation (i.e. SWPPP, Erosion Control Plan, etc.), MDEQ Small Construction Notice of Intent (SCNOI) with supporting documentation (i.e. SWPPP, Erosion Control Plan, etc.). It shall be the CONTRACTOR'S responsibility to provide and maintain the necessary permitting and maintenance as related to storm water quality and erosion control prior to and during the project until final approval and closeout. If additional information is required from the Owner and/or Engineer, it shall be the responsibility of the CONTRACTOR to solicit and procure the necessary information in order to solicit and procure the necessary permitting and controls for the project.
2. The CONTRACTOR shall plan and execute construction and earthwork by methods to control surface drainage from cuts and fills, and from borrow and waste disposal areas, to prevent erosion and sedimentation. The areas of bare soil exposure at one time shall be held to a minimum, and temporary control measures such as silt screens, berms, dikes and drains shall be provided.
3. Fills and waste areas shall be constructed by selective placement to eliminate surface silts and clays which will erode.

4. The CONTRACTOR shall periodically inspect earthwork to detect any evidence of the start of erosion, and shall apply corrective measures to control erosion as required by the ENGINEER at no additional cost to the OWNER.

1-03 RECORDS

- A. The CONTRACTOR shall maintain a complete and accurate log of any control or survey work as it progresses. Upon completion of major items or upon request, the CONTRACTOR shall submit two (2) copies to the ENGINEER.

1-04 CONTRACT DRAWINGS

- A. Contract Drawings, if included for the project, shall be issued as an attachment to and made part of the Contract Documents for the project.

1-05 CONTRACT SPECIFICATIONS

- A. The Specifications governing the work under this Contract shall be as set forth hereinafter as Technical Specifications together with any and all addenda.

1-06 ENGINEER

- A. References in these contract documents to ENGINEER shall refer to **DABBS CORPORATION** unless otherwise specified in the Contract Documents.

1.07 REVIEW OF THE WORK

- A. Resident Project Representatives, who are representatives of the ENGINEER, will be appointed to review materials used and work performed. The Resident Project Representatives will not be authorized to revoke, alter, enlarge or relax the provisions of these Contract Documents, nor to delay the fulfillment of this Contract by failure to inspect materials and work with reasonable promptness. Resident Project Representatives are placed on the work to keep the ENGINEER informed as to the progress of the work and the manner in which it is being done; also to call the attention of the CONTRACTOR to nonconformity with the requirements of the Drawings and Specifications. The Resident Project Representatives will not have authority to approve or accept portions of the work, to issue instructions contrary to the Drawings, Specifications or other parts and sections of these Contract Documents, or to act as foreman for the CONTRACTOR. **The Resident Project Representatives will have authority to reject defective material.**
- B. The presence of a Resident Project Representative shall in no way lessen the responsibility of the CONTRACTOR for full compliance with the requirements of these Contract Documents.

1-08 SUGGESTIONS TO CONTRACTOR

- A. Means, process or method of work suggested by the ENGINEER or other representative of the OWNER to the CONTRACTOR, if adopted or followed by the CONTRACTOR in whole or in part, shall be used at the risk and responsibility of the CONTRACTOR, and the ENGINEER and the OWNER will assume no responsibility therefor.

1-09 CONTRACTOR'S OBLIGATIONS

- A. The CONTRACTOR shall do and perform all work and furnish supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete the work required by the Contract, within the time herein specified, in accordance with the provisions of the Contract, Specifications, Drawings and Supplemental Drawings, and in accordance with the directions of the ENGINEER as given from time-to-time during the progress of the work. He shall furnish, erect, maintain and remove such construction plant and such temporary works as may be required. The CONTRACTOR shall observe, comply with and be subject to terms, conditions, requirements and limitations of the Contract and Specifications, and shall do, carry on and complete the entire work to the satisfaction of the ENGINEER and the OWNER.
- B. The CONTRACTOR shall be responsible for any state and local permits.

1-10 TIME FOR COMPLETION

- A. It is hereby understood and mutually agreed, by and between the CONTRACTOR and the OWNER, that the date of beginning and the time for completion as specified in the Contract for the work to be done hereunder are ESSENTIAL CONDITIONS of the Contract; and it is further mutually agreed that the work embraced in this Contract shall be commenced on or before a date to be specified in a written "NOTICE TO PROCEED".
- B. The CONTRACTOR agrees that said work shall be prosecuted regularly and diligently without interruption at such rate of progress as will ensure full completion thereof within the time specified.
- C. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the time for the completion of the work described herein is a reasonable time for the completion of same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.
- D. If the said CONTRACTOR shall neglect, fail or refuse to complete the work within the time herein specified, or extension thereof granted by the OWNER, the CONTRACTOR does hereby agree, as a part of consideration for the awarding of this Contract, to pay to the OWNER the amount specified in the Contract, not as a penalty

but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the CONTRACTOR shall be in default after the time stipulated in the contract for completing the work.

1-11 SUPPLEMENTARY DRAWINGS

- A. Whenever required by the Specifications or the Drawings, as well as for all undetailed material to be fabricated and furnished by the CONTRACTOR, the CONTRACTOR shall make specialty or detailed shop drawings in amplification of the Drawings referred to in the Contract before commencing the work.
- B. Six (6) copies of each drawing and necessary data shall be submitted to the ENGINEER. Each drawing or data sheet shall be clearly marked with the name of the Project, the CONTRACTOR'S name and references to applicable Specification paragraphs and Drawing sheet.
- C. After the ENGINEER has reviewed the Drawings and data, three (3) copies will be returned to the CONTRACTOR marked either (1) "Rejected", (2) "Reviewed", (3) "Furnish as Corrected", or (4) "Revise and Resubmit".
- D. Unless otherwise directed by the ENGINEER, when Drawings and data are returned marked "Furnish as Corrected", the changes shall be made as noted thereon and six (6) corrected copies furnished to the ENGINEER.
- E. When Drawings and data are returned marked "Revise and Resubmit", the corrections shall be made as noted thereon and as instructed by the ENGINEER and six (6) corrected copies resubmitted.
- F. The ENGINEER'S review of Drawings and data submitted by the CONTRACTOR will cover only general conformity to the Drawings and Specifications, external connections and dimensions which affect the layout. The ENGINEER'S review of Drawings marked "Reviewed" or "Furnish as Corrected" does not indicate a through review of all dimensions, quantities and details of the material, equipment, device or item shown and does not relieve the CONTRACTOR from the responsibility for errors or deviations from the Contract Requirements.
- G. Corrections or comments made on the drawings during the ENGINEER'S review do not relieve the CONTRACTOR from compliance with the requirements of the Drawings and Specifications. Checking will be only for review of general conformance with the information given in the contract Documents. The CONTRACTOR is responsible for: confirming and correlating quantities and dimension; selecting fabrication processes and techniques of construction; coordination his work in a safe and satisfactory manner.
- H. Drawings and data, after final processing by the ENGINEER, shall become a part of the Contract Documents and the work shown or described thereby shall be

performed in conformity therewith unless otherwise authorized by the OWNER or the ENGINEER.

1-12 CORRECTION OF DEFECTIVE WORK AFTER FINAL ACCEPTANCE

- A. The CONTRACTOR hereby agrees to make, at his own expense, repairs or replacements necessitated by defects in materials or workmanship, supplied under terms of this Contract, which become evident within one (1) year after the date of substantial completion. The CONTRACTOR further assumes responsibility for a similar one (1) year guarantee for work and materials provided by subcontractors or manufacturers of packaged equipment components. The effective date for the start of the guarantee or warranty period is defined as the date of substantial completion established by the ENGINEER in the Certificate of Substantial Completion.

1-13 COOPERATION BETWEEN CONTRACTORS

- A. If separate contracts are let within the limits of a project, such CONTRACTORS shall arrange and conduct the performance of their work and handling of materials so as to minimize interference with work being performed by other CONTRACTORS within the limits of the same project.

SECTION J.4
INSURANCE REQUIREMENTS

**SECTION J.4
INSURANCE REQUIREMENTS**

- 1-01 All references to "OWNER" herein shall refer to the Owner as identified in Section B (Item 1) bound herewith.
- 1-02 The CONTRACTOR shall carry insurance as prescribed herein and all policies shall be with companies satisfactory to the OWNER.
- 1-03 If a part of this Contract is sublet, the CONTRACTOR shall require each subcontractor to carry insurance of the same kinds and in like amounts as carried by the prime CONTRACTOR.
- 1-04 Certificates of insurance shall state that thirty (30) days written notice WILL BE given to the OWNER before the policy is canceled or changed.** No CONTRACTOR or subcontractor will be allowed to start construction work on this Contract until all certificates of insurance required herein are filed and approved by the OWNER. The certificates shall show the type, amount, class of operations covered, effective dates and the dates of expiration of policies. In the event the contract time exceed one year CONTRACTOR shall submit renewal certificates for all policies 30 days prior to the expiration of the existing policy.
- 1-05 The CONTRACTOR shall secure and maintain in effect for the period of the Contract and pay all premiums for the following kinds and amounts of insurance:
- A. Workmen's Compensation and Employer's Liability Insurance:
1. This insurance shall protect the CONTRACTOR against all claims under applicable State Workmen's Compensation Laws. The CONTRACTOR shall also be protected and shall cause each subcontractor to be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a Workmen's Compensation law. The liability limits shall not be less than the required statutory limits for Workmen's Compensation and Employer's Liability in the amount of Five Hundred Thousand Dollars (\$500,000) for each person. This policy shall include an "all states" endorsement. CONTRACTOR will secure a Waiver of Subrogation endorsement in favor of both OWNER and ENGINEER. CONTRACTOR further agrees to maintain USL&H or other necessary Federal coverages, when applicable, to protect both CONTRACTOR and its employees.
- B. CONTRACTOR'S Comprehensive Commercial General Liability Insurance, covering all operations in connection with the performance of this Contract in amounts not less than the following, and shall name OWNER and ENGINEER and its employees as additional insureds:
1. Bodily injury liability in the amount of One Million Dollars (\$1,000,000) for each occurrence subject to that limit per accident a total (or aggregate) limit

of Two Million Dollars (\$2,000,000), in the aggregate for all damages arising out of injury to or destruction of property during the policy period.

2. The Comprehensive General Liability policies carried by both the prime and the subcontractors shall contain an endorsement to include the coverage of the following hazards;

- a. Explosion, collapse, and underground property damage (XCU) to include any damage or destruction of property below the surface of the ground, such as wires, conduits, pipes, mains, sewers, etc. caused by the CONTRACTOR'S operations.
- b. The collapse of or structural injury to buildings, structures or property on or adjacent to the OWNER'S premises caused by the CONTRACTOR'S operations in the removal of other buildings, structures, or supports, or by excavation below the surface of the ground.
- c. Contractual Liability Coverage for the "Hold Harmless" segments of the Contract Documents.

C. CONTRACTOR'S Contingent or Protective Liability and Property Damage:

1. In case part of this Contract is sublet, the CONTRACTOR shall secure contingent or protective liability and property damage insurance to protect him from claims arising from the operation of his subcontractors in the execution of work included in the Contract. In no case shall the amount of such protection be less than the limits of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate. The coverage in each case shall be acceptable to the OWNER.

D. Automotive Public Liability and Property Damage:

1. The CONTRACTOR shall maintain automobile public liability insurance in the amount of not less than a combined single limit of \$1,000,000 to protect him from any and all claims arising from the use of the following:
 - a. CONTRACTOR'S own automobiles and trucks.
 - b. Hired automobiles and trucks.
 - c. Automobiles and trucks owned by sub-contractors.

2. The aforementioned is to cover use of automobiles and trucks on and off the site of the project, and shall name OWNER and ENGINEER and its employees as additional insureds.
- E. OWNER'S Protective Liability Policy (OCP):
1. The Contractor shall maintain OWNER'S Protective Liability Insurance with the OWNER as the named insured, and their servants, agents including the ENGINEER and employees as additional insureds in amount not less than the following:
 - a. Each occurrence in the amount of One Million Dollars (\$1,000,000) and Two Million Dollars (\$2,000,000) in the aggregate for all damages arising out of any injury or destruction of property.
- F. Umbrella liability insurance with a limit of not less than One Million Dollars (1,000,000) providing additional coverage to the policies listed above.
- G. Builder's Risk Insurance (Fire and Extended Coverage):
1. Until the Project is completed and is accepted by the OWNER the CONTRACTOR is required to maintain Builder's Risk Insurance (fire and extended coverage) adequate to fully cover the insurable portion of the project for the benefit of the OWNER, the prime CONTRACTOR and sub-contractors as their interests may appear.
- 1-06. Insurance policies shall remain in effect on portions of the work which have been completed and which may or may not be occupied or utilized by the OWNER prior to the completion and acceptance of the entire work included in the Contract.

SECTION J.5
SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

SECTION J.5
SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

1-01 REQUIREMENTS INCLUDED

- A. Submit Shop Drawings, Product Data and Samples required by Contract Documents.
- B. Submit six (6) bound copies to ENGINEER for review unless otherwise specified.

1-02 SHOP DRAWINGS

- A. Drawings shall be presented in a clear and thorough manner.
- B. Identify details by reference to sheet and detail, schedule or item numbers shown on Contract Drawings.

1-03 PRODUCT DATA

- A. Preparation:
 - 1. Clearly mark each copy to identify pertinent products.
 - 2. Show performance characteristics and capacities.
 - 3. Show dimensions and clearances required.
 - 4. Show wiring or piping diagrams and controls as necessary.
- B. Manufacturer's standard schematic drawings and diagrams: 1) Modify drawings and diagrams to delete information which is not applicable to the work; 2) Supplement standard information to provide information specifically applicable to the work.

1-04 SAMPLES

- A. Office samples shall be adequate to clearly illustrate: 1) Functional characteristics of the product, with integrally related parts and attachment devices; 2) Full range of color, texture, pattern, operation, use, etc.

1-05 CONTRACTOR RESPONSIBILITIES

- A. Review Shop Drawings, Product Data and Samples prior to submission to ENGINEER.
- B. Determine and verify:
 - 1. Field measurements where necessary.

2. Field construction criteria from drawings or manufacturer's manuals.
 3. Catalog numbers and similar data from manufacturer.
 4. Conformance with specifications and detailed drawings.
- C. Coordinate each submittal with requirements of the Work and of the Contract Documents.
- D. Notify the ENGINEER in writing, at time of submission, of deviations in the submittals from requirements of the Contract Documents and provide an explanation for such deviation.
- E. Begin no fabrication of items or perform items of work which requires submittals until return of submittals indicating ENGINEER'S review.

1-06 SUBMISSION REQUIREMENTS

- A. Transmittal Letter and Submittals:
1. Use transmittal forms acceptable to the ENGINEER.
 2. One copy only, with each item completed, is required for each submittal.
 - a. Submittals tendered with incomplete "Transmittal Letters" will be returned for resubmission.
 3. Make submittals promptly and in such sequence as to cause no delay in the work or in the work of other CONTRACTORS, should one or more CONTRACTORS be involved on a project.
- B. Number of submittals required:
1. Shop Drawings: Submit the number of opaque reproductions which the Contract Documents require, but in no case less than six (6) copies. Three (3) copies of each will be retained by the ENGINEER for the project files. Three (3) copies will be stamped, indicating any additional requirements, and returned to the CONTRACTOR.
- C. Submittals shall contain:
1. The date of submission and the dates of any previous unapproved submissions.
 2. The project title and number.
 3. The names of:

- a. CONTRACTOR
 - b. Supplier
 - c. Manufacturer
4. Identification of the product or component, with reference to the applicable specification section number.
 5. Field dimensions, clearly identified as such.
 6. Relation to adjacent or critical features of the work or materials.
 7. Applicable standards, such as ASTM, AWWA, AASHTO, or Federal Specification numbers, etc.
 8. Identification of deviations from Contract Specifications.
 9. Identification of revisions made on resubmittals.
 10. CONTRACTOR'S stamp, initialed or signed, certifying as to review of submittal, verification of products, field measurements and field construction criteria and coordination of the information within the submittal, with requirements of the work and of Contract Documents.

1-07 RESUBMISSION REQUIREMENTS

- A. Make any corrections or changes in the submittals required and resubmit until approved.
- B. Shop Drawings and Product Data
 1. Revise initial drawings or data, and resubmit as specified for the initial submittal.
 2. Indicate changes which have been made other than those requested by the ENGINEER.
- C. Samples: Submit new samples as required for initial submittal.

1-08 ENGINEER'S DUTIES

- A. Review submittals with reasonable promptness and in accord with project schedule.
- B. Affix stamp and initials or signature, and indicate requirements for resubmittal, or review of submittal.
- C. Return submittals to CONTRACTOR for distribution or for resubmission.

SECTION J.6
RECORD DOCUMENTS

**SECTION J.6
RECORD DOCUMENTS**

1-01 REQUIREMENTS INCLUDED

- A. The CONTRACTOR shall maintain, during the course of the work, and provide to the ENGINEER, upon project completion, record documents as specified herein.

1-02 MAINTENANCE OF DOCUMENTS

- A. Maintain in CONTRACTOR'S field office in clean, dry condition the following: (1) Contract Drawings, (2) Specifications, (3) Addenda, (4) Approved Shop Drawings, (5) Change Orders, (6) Other Modifications of Contract, Test Records, Survey Data, Field Orders and (7) All other documents pertinent to the CONTRACTOR'S Work.
- B. Provide files and racks for proper storage and easy access as needed.
- C. Make documents available at all times for inspection by the ENGINEER and the OWNER.
- D. Record documents shall not be used for other purposes and shall not be removed from the field office without the ENGINEER'S approval.

1-03 MARKING SYSTEM

- A. Make changes, revisions, additions, deletions, etc., carefully and in legible form acceptable to the ENGINEER.
- B. Provide colored pencils for marking changes, revisions, additions, deletions, etc., to the record set of Contract Drawings.
- C. Do not use ink or felt tip pens for marking documents.

1-04 RECORDING

- A. Label each document "PROJECT RECORD" in large red printed letters.
- B. Keep record documents current with work completed.
- C. Do not permanently conceal work until required information has been recorded on drawings.
- D. Contract Drawings: Legibly mark to record actual construction to include the following:
 - 1. Depths or heights of various elements in relation to datum.

2. Horizontal and vertical location of underground utilities and appurtenances referenced to permanent surface improvements or bench marks.
 3. Location of internal appurtenances concealed in construction referenced to visible and accessible features of the work.
 4. Field changes of dimensions and details.
 5. Changes made by Change Order or Field Order clearly identified as such.
 6. Details not on original Contract Drawings.
- E. Specifications and Addenda: Legibly mark up each Section and record the following:
1. Manufacturer, trade name, catalog number and supplier of each product and item of equipment actually installed.
 2. Changes made by Change Order or Field Order clearly identified as such.
 3. Other matters not originally specified.
- F. Shop Drawings: Maintain as record documents and legibly annotate Drawings to record changes made after review.

1-05 SUBMITTAL

- A. At completion of project, deliver record documents to the ENGINEER.
- B. Accompany submittal with transmittal letter containing:
1. Date.
 2. Project title and number.
 3. CONTRACTOR'S name and address.
 4. Title and number of each record document.
 5. Certification that each document as submitted is complete and accurate.
 6. Signature of CONTRACTOR, or his authorized representative.
- C. Incomplete or illegible record documents will be returned to the CONTRACTOR for completion or correction.

SECTION J.7
CONTRACT CLOSEOUT

**SECTION J.7
CONTRACT CLOSEOUT**

1-01 REQUIREMENTS INCLUDED

- A. Comply with requirements stated in conditions of the Contract and Specifications for administrative procedures in closing out the work.
- B. CONTRACTOR shall submit all notices and certifications in a form acceptable to the ENGINEER.

1-02 SUBSTANTIAL COMPLETION

- A. When CONTRACTOR considers the work is substantially complete, he shall submit to the ENGINEER:
 - 1. Written notice that the work, or designated portion thereof, is substantially complete.
 - 2. A list of items to be completed or corrected.
- B. Within a reasonable time after receipt of such notice, an inspection will be made by the ENGINEER to determine the status of completion.
- C. Should it be determined that the work is not substantially complete:
 - 1. CONTRACTOR will be notified in writing, giving the reasons for such determination.
 - 2. Contractor shall remedy the deficiencies in the work, and send a second written notice of substantial completion.
 - 3. Work will be reinspected.
- D. When the ENGINEER concurs that the work is substantially complete, he will:
 - 1. Prepare a Certificate of Substantial Completion on an acceptable form accompanied by a list of items to be completed or corrected.
 - 2. Submit the Certificate to OWNER and CONTRACTOR for their written acceptance of the responsibilities assigned to them in the Certificate.

1-03 FINAL INSPECTION

- A. When CONTRACTOR considers the work is complete, he shall submit written certifications to the ENGINEER that:

1. Equipment and systems have been tested in the presence of the ENGINEER and OWNER'S representative and are fully operational.
 2. Work has been completed in accordance with Contract documents and is ready for final inspection.
- B. An inspection will be made by the ENGINEER to verify the status of completion with reasonable promptness after receipt of such certification.
- C. Should work be considered incomplete or defective:
1. The ENGINEER will promptly notify the CONTRACTOR in writing, listing the incomplete or defective items of work.
 2. CONTRACTOR shall take immediate steps to remedy the stated deficiencies, and send a second written certification to the ENGINEER that the work is complete.
 3. Work will be reinspected.
- D. When the work is acceptable under the contract documents, the CONTRACTOR will be requested to deliver closeout submittals.

1-04 CONTRACTOR CLOSEOUT SUBMITTALS

- A. Evidence of compliance with requirements of governing authorities:
1. Certificate of Inspection:
 - a. Mechanical: City and/or County
 - b. Electrical: City and/or County
 - c. General: City and/or County
- B. Waivers and Liens Affidavit.
- C. Surety Release.
- D. Labor and Material Warranty.
- E. Certification Statement that material incorporated into the project meets or exceeds specification requirements of the Contract.
- F. Project record documents and drawings.
- G. Operating and Maintenance Data, Instructions to OWNER'S Personnel: As specified in Contract Documents or ordered by the ENGINEER.

- H. Spare Parts and Maintenance Materials: As specified in Contract Documents or ordered by the ENGINEER.
- I. Receipt for keys, if any, to all locks, gates and doors.

1-05 FINAL ADJUSTMENT OF ACCOUNTS

- A. Submit a final statement of accounting to ENGINEER.
- B. Statement shall reflect all adjustments to the contract sum:
 - 1. The original contract sum.
 - 2. Additions or deductions resulting from:
 - a. Previous change orders.
 - b. Allowances.
 - c. Unit Prices.
 - d. Deductions for uncorrected work.
 - e. Deductions for liquidated damages.
 - f. Other adjustments.
 - 3. Total contract sum, as adjusted.
 - 4. Previous payments.
 - 5. Sum remaining due.
- C. Final Change Order will be prepared reflecting approved adjustments to the Contract sum which were not made by previous Change Orders.

1-06 FINAL APPLICATION FOR PAYMENT

- A. CONTRACTOR shall submit the final Application for Payment in accordance with procedures and requirements stated in the Conditions of the Contract.
- B. No final application for payment will be processed until the Project Record Documents and Drawings have been submitted and approved.

SECTION J.8
SCHEDULE OF VALUES
LUMP SUM BID ITEMS

SECTION J.8
SCHEDULE OF VALUES
LUMP SUM BID ITEMS

- 1-01 The successful BIDDER, within five (5) days of the receipt of the "NOTICE OF AWARD", shall submit, a Schedule of Values for "lump sum bid items", for OWNER'S and ENGINEER'S review. The Schedule of Values shall be an itemized list that establishes the various quantities and value or cost of each major part or component of Lump Sum Items. It shall be used as the basis for preparing progress payment applications and for use as a basis for negotiations concerning additional work or credits which may arise during the construction.
- 1-02 PREPARATION
- A. The Schedule shall be prepared in the form and supported by the data required herein.
 - B. The Schedule shall show a breakdown of costs for labor, materials, equipment, delivery, installation, overhead, profit and other costs used in preparation of the Bid.
 - C. Costs shall be in sufficient detail to indicate a separate amount for each major component of the item listed.
 - D. CONTRACTOR may include items for bonds, insurance, and temporary facilities. Bonds and insurance may be claimed on the first application for payment. Any remaining items will be included for payment at the same percentage rate as total percent of the lump sum item completion.
 - E. The Schedule shall be prepared on 8-1/2 inch by 11-inch white paper.
 - F. Use items listed as Lump Sum on the Bid Form as basis for Schedule format and identify each item with number and description as shown on Bid Form.
 - G. The sum of the individual values shown on the Schedule of Values for each item must equal the Total Price bid for that item on the Bid Form.

SECTION K
TECHNICAL SPECIFICATIONS

SECTION K - TECHNICAL SPECIFICATIONS

**COURT STREET DOWNTOWN
PARKING LOT IMPROVEMENTS**

Table of Contents

1. General Construction Notes	GC-1
2. Technical Provisions for MDOT Std. Specifications	TS-1

GENERAL CONSTRUCTION NOTES

1. The contractor shall be responsible for completing and providing materials and finished products that are in compliance with the requirements of the Contract Documents, including the Project Drawings and Technical Specifications. As defined in the Specifications, the Contractor shall submit the necessary material information, mix designs, applications rates, etc. to the Engineer for review and approval prior to the commencement of any work on the Project.
2. The contractor shall be solely responsible for protecting workers, pedestrians, vehicular traffic during the entire project. As identified in the Contract Documents, the contractor shall provide and implement the necessary temporary traffic control devices/measures, barriers, etc. as required to always protect pedestrians and vehicular traffic on public streets during the entire duration of the Project, including during non-work periods. It is the contractor's responsibility to secure the site and maintain a safe work zone based on the project conditions.
3. The Project Drawings are included as part of the Contract Documents for this Project. Existing utilities are NOT represented on the Project Drawings. The Contractor shall be solely responsible for the coordination of the location (horizontal and vertical) of existing utilities (power, telephone, gas, water, sewer, etc.) with the appropriate utility company before construction begins and prior to any excavation for the project. Utility or service lines may need to be potholed prior to excavation in order to verify location and/or depth. The Contractor shall be responsible for calling in the Mississippi 811 service to have utilities located in accordance with local and State laws.
4. Utilities encountered during construction shall be protected by the Contractor and repairs necessary due to damage to same by the Contractor shall be provided by Contractor at no additional cost to the Owner.
5. The Contractor shall maintain access to the unimproved portions of the parking lot, particularly adjacent to the existing Tupelo Water & Light Collections/Administrative Building. Should there be a need to restrict access for any time period during construction, the Contractor shall get approval in writing from the City Engineer, Mr. Dennis Bonds, PE.
6. The Contractor shall be responsible for completing all sampling and testing of materials as required by the specifications at no additional cost to the Owner.
7. The Contractor shall be responsible for completing all permitting, including any necessary stormwater permitting (SCNOI, SWPPP, Erosion Control Plan, etc.), at no additional cost to the Owner.

END OF SECTION

TECHNICAL SPECIFICATIONS

TECHNICAL PROVISIONS FOR MDOT STANDARD SPECIFICATIONS

PART 1 - GENERAL

- A. For any work provided under the contract pertaining to grading, drainage, paving, driveways, curb & gutter, granular material, utilities, erosion control, etc. included in the general requirements for the project, the contractor shall utilize the applicable requirements per the Mississippi Standard Specifications for Road and Bridge Construction, 2017 Edition, (also referenced as MDOT Standard Specifications) unless a separate technical specification is provided for a specific item. In cases where the separate technical specification may be different than the MDOT Standard Specifications, the contractor may utilize the MDOT Standard Specifications if approved in writing by the Engineer.
- B. The Contractor shall perform the work for all specified items under the Mississippi Standard Specifications for Road and Bridge Construction, 2017 Edition, except where superseded by Special Provisions, Supplements to Special Provisions or amended by revisions of the Specifications contained within the Contract Documents.
- C. The Contractor shall perform the work for all specified items under the Mississippi Standard Specifications for Road and Bridge Construction, 2017 Edition, and the most current Special Provisions and/or Amendments. The Contractor shall be responsible for ensuring that the most current Special Provisions are utilized and that any Special Provisions and/or Supplements to Special Provisions are complied with for all materials specified in accordance with the MDOT Standard Specifications, 2017 Edition, whether included herein or not.
- D. Where applicable, the Contractor shall be required to provide materials, work, etc. in accordance with MDOT Standard Drawings and related details for the fabrication, installation and materials, especially pertaining to drainage pipe, drainage structures, traffic control, erosion control, etc.

PART 2 – MDOT SPECIFICATION ITEMS

- A. Clearing & Grubbing
- B. Excavation
- C. Granular Materials
- D. Concrete
- E. Asphalt (See Section C – SOW for exceptions related to alternate mix designs)
- F. Cold Milling
- G. Traffic Control / Temporary Signage
- H. Erosion Control (i.e. Silt Fence, Wattles, etc.)

END OF SECTION



AGENDA REQUEST

TO: Mayor and City Council
FROM: Chuck Williams, Public Works
DATE April 28, 2022
SUBJECT: IN THE MATTER OF BID APPROVAL LOCAL STREET MAINTENANCE
MILL AND OVERLAY PROGRAM – 2022 ANNUAL BID 2022-013PW - **CW**

Request:

Request for Bid Approval for the Local Street Maintenance Mill and Overlay Program – 2022 Annual Bid – 2022-013PW

Three bidders responded. We propose the project be awarded to the lowest bidder Gregory Companies, LLC DBA Murphree Paving



April 26, 2022

Mr. Chuck Williams
Director, Public Works Dept.
604 Crossover Road
Tupelo, Mississippi 38801

REFERENCE: RECOMMENDATION OF AWARD OF CONTRACT
LOCAL STREET MAINTENANCE MILL & OVERLAY PROGRAM - 2022 ANNUAL BID
BID NO. 2021-0013PW

Dear Mr. Williams:

I am pleased to submit to you, along with the Mayor and City Council, our conclusions and recommendations regarding the award of the construction contract for the referenced project. Bids were opened at Tupelo City Hall on Thursday, April 21, 2022 at 10:00 AM local time.

This bid is for the 2022 annual term and quantities were estimated based on the projected roadway milling and overlay improvements that were established by Public Works using the Street Saver database and field inspections. Quantities are expected to vary for term bid contracts based on the final improvements that are completed under this contract and, thus, the final contract amount will likely vary from the bid price.

As represented on the attached tabulation of bids, three bids were received for this project from ranging from \$4,318,6200.00 - \$5,524,585.00. The low bid was from Gregory Companies, LLC DBA Murphree Paving. The low bid meets the bid criteria set forth for the Project and it appears that the proper proposal documentation was submitted as required by the Contract Documents.

Thus, it is our recommendation that the City award this contract in the amount of \$4,318,620.00 to Murphree Paving for the referenced project and, with the approval of the City Council, that the Mayor be authorized to execute the contracts on behalf of the City. We appreciate the opportunity to be of service to you and to be involved with this project. Please let us know should have any questions or require additional information.

Sincerely,
DABBS CORPORATION

Dustin D. Dabbs, PE
President

- C: Mr. Don Lewis, COO, City of Tupelo
- Ms. Kim Hanna, CFO, City of Tupelo
- Mr. Ben Logan, City Attorney, City of Tupelo
- Mr. Jason Rush, Public Works, City of Tupelo

@dabbscorp	OFFICE 662.840.4162	1005 N. Eason Boulevard
	MOBILE 601.927.4012	Tupelo, MS 38804

BID TABULATION
CITY OF TUPELO, MISSISSIPPI
LOCAL STREET MAINTENANCE MILL & OVERLAY PROGRAM
2022 ANNUAL TERM BID - BID No. 2022-013PW
BID DATE: 04/21/2022

BASE BID				MURPHREE PAVING		FALCON CONSTRUCTION		APAC-MISSISSIPPI	
ITEM NO.	DESCRIPTION	UNIT	QNTY.	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
1	Cold Milling, All Depths	SY	192,700	\$4.00	\$ 770,800.00	\$5.00	\$ 963,500.00	\$7.25	\$1,397,075.00
2	Base Repair Cold Milling (Short Run Work)	SY	2,000	\$7.50	\$ 15,000.00	\$25.00	\$ 50,000.00	\$80.00	\$ 160,000.00
3	Asphalt Surface Course, 9.5 mm Mix	TON	21,200	\$163.95	\$3,475,740.00	\$158.00	\$3,349,600.00	\$180.00	\$3,816,000.00
4	Asphalt Base Course, 19 mm Mix (Short Run Paving)	TON	300	\$190.00	\$ 57,000.00	\$250.00	\$ 75,000.00	\$500.00	\$ 150,000.00
5	Granular Shoulder Material, In Place	CY	1	\$75.00	\$ 75.00	\$200.00	\$ 200.00	\$1,500.00	\$ 1,500.00
6	4" Temporary Traffic Stripe, Cont. White	LF	1	\$2.50	\$ 2.50	\$0.50	\$ 0.50	\$5.00	\$ 5.00
7	4" Temporary Traffic Stripe, Cont. Yellow	LF	1	\$2.50	\$ 2.50	\$0.50	\$ 0.50	\$5.00	\$ 5.00
GRAND TOTAL					\$ 4,318,620.00	\$ 4,438,301.00		\$ 5,524,585.00	

Prepared By:  Dabbs Corporation

PROPOSAL

Proposal of Gregory Companies LLC, dba Missphree Paving (hereinafter called "BIDDER"), organized and existing under the laws of the State of Mississippi doing business as a (corporation, partnership, limited liability company, or individual) to **TUPELO, MS**, (hereinafter called "OWNER"). In compliance with your advertisement for Bids, BIDDER, hereby proposes to perform all WORK for construction of

"LOCAL STREET MAINTENANCE MILL & OVERLAY PROGRAM – 2022 ANNUAL BID"

in strict accordance with the CONTRACT DOCUMENTS, within the time set forth herein, and at the prices stated below. By submission of the BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been developed independently, without consultation, communication or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in a written "NOTICE TO PROCEED" and to fully complete the Project within **214** consecutive calendar days thereafter. BIDDER further agrees to pay as liquidated damages, the sum of **\$300** for each consecutive calendar day thereafter as provided for elsewhere in these CONTRACT DOCUMENTS.

BIDDER ACKNOWLEDGES receipt of the following ADDENDA:

NUMBER: 01 DATE: April 12th, 2022
NUMBER: _____ DATE: _____
NUMBER: _____ DATE: _____
NUMBER: _____ DATE: _____

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to this bid.

BIDDER understands that the quantities mentioned below are approximate only and are subject to either increase or decrease, and hereby proposes to perform any increased or decreased quantities of work at the Unit Price Bid.

In accordance with the requirements of the Plans, Specifications and Contract Documents, BIDDER proposes to furnish all necessary materials, equipment, labor, tools and other means of construction and to construct the Project in accordance with the Contract Documents within the specified Contract Time for the following Unit Prices specified.

BIDDER further agrees to execute the contract agreement as bound herein within ten (10) days after receipt of contract forms from the OWNER.

BIDDER agrees to pay as liquidated damages the amount provided herein for each consecutive calendar day after the Contract completion date specified in a written "NOTICE TO PROCEED" that he fails to complete the work unless the Contract Time is extended by a written Change Order.

BIDDER also proposes to execute a Performance Bond and a Payment Bond, as shown in the Specifications, each in an amount of not less than **one hundred percent (100%)** of the total of the Base Bid. These Bonds shall not only serve to guarantee the completion of the work on the BIDDERS part, but also to guarantee the excellence of both workmanship and materials until the work is finally accepted.

BIDDER encloses a Bid Bond or Certified Check for 5% of Base Bid Amount DOLLARS (\$ 215,931.00) and hereby agree that in case of failure to execute the Contract and furnish the required Bonds within (10) days after the Receipt of Contract Forms, the amount of this Certified Check or Bid Bond will be forfeited to the OWNER, as liquidated damages arising out of his failure to execute the Contract as proposed.

It is understood that in case BIDDER is awarded the work, the Certified Check or Bid Bond submitted as Bid security will be returned as stipulated in the Specifications.

Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provision of the Equal Opportunity Clause set forth in the Federal Requirements, if applicable.

The low BIDDER shall supply the names and address of major MATERIAL SUPPLIERS AND SUBCONTRACTORS when required to do so by the OWNER.

Inspection trips for prospective BIDDERS will be coordinated thru OWNER prior to submission of proposal.

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices or base bid amount: **SEE PAGE D-4 FOR BID ITEMS.**

NOTES:

1. Unit price amounts are to be shown in figures where indicated. Where a discrepancy in the unit price and the extension of any items occurs, the unit price will govern.
2. Unit prices shall include all labor, materials, bonding, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.
3. Any erasure, change or alteration of any kind must be initialed by the BIDDER.
4. Bid prices shall include sales tax and all other applicable taxes and fees.
5. Any item of work not specified on the Proposal as a separate pay item or indicated as an absorbed cost in a pay item but which is incidental to completion of the work shall be considered as an absorbed cost with full compensation included in the unit price bid for the particular item involved.
6. OWNER reserves the right to award any combination of base and additive alternate bids (if any) it deems advantageous and in the event that all specified bid item units are lump sum (LS), the OWNER reserves the right to delete any such item or combination of such items from the project. The OWNER further reserves the right to delete any item or items desired from the Bid Schedule after the Contract has been awarded. Any deletions, if any made, shall be by Change Order and BIDDER hereby agrees to accept such Change Orders.

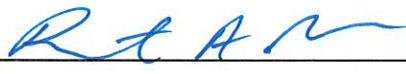
SECTION D - BID FORM
TUPELO PUBLIC WORKS BID NO. 2022-013PW
LOCAL STREET MAINTENANCE
MILL & OVERLAY PROGRAM - 2022 ANNUAL BID
MARCH, 2022

ITEM NO.	DESCRIPTION	UNIT	QNTY.	UNIT COST	TOTAL COST
1	Cold Milling, All Depths	SY	192,700	\$ 4.00	\$ 770,800.00
2	Base Repair Cold Milling (Short Run Work)	SY	2,000	\$ 7.50	\$ 15,000.00
3	Asphalt Surface Course, 9.5 mm Mix	TON	21,200	\$ 163.95	\$ 3,475,740.00
4	Asphalt Base Course, 19 mm Mix (Short Run Paving)	TON	300	\$ 190.00	\$ 57,000.00
5	Granular Shoulder Material, In Place	CY	1	\$ 75.00	\$ 75.00
6	4" Temporary Traffic Stripe, Cont. White	LF	1	\$ 2.50	\$ 2.50
7	4" Temporary Traffic Stripe, Cont. Yellow	LF	1	\$ 2.50	\$ 2.50
<p align="center"><i>Four million, three hundred & eighteen thousand, Six hundred and twenty 00/100 dollars</i></p> GRAND TOTAL					\$ 4,318,620.00

NOTE: QUANTITIES REPRESENTED HEREIN ARE NOT NECESSARILY ACTUAL QUANTITIES, BUT ARE ESTIMATED BASED ON PROPOSED PROJECT CONDITIONS. THE TEMPORARY STRIPING QUANTITIES WILL VARY BASED ON CONDITIONS IN THE FIELD; THE QUANTITIES INCLUDED ON THE BID FORM FOR THE TEMPORARY STRIPING PAY ITEMS ARE PROVIDED IN ORDER TO ESTABLISH A UNIT PRICE FOR THE TERM BID WORK. THE CONTRACTOR AGREES TO PROVIDE ALL PAY ITEMS AS DIRECTED IN THE FIELD FOR THE UNIT PRICES INCLUDED ON THE BID FORM.

IN ACCORDANCE WITH THE PUBLISHED BID NOTICE, GENERAL CONDITIONS OF WORK AND CONTRACT DOCUMENTS FOR THE REFERENCED BID, THE UNDERSIGNED DOES HEREBY AGREE TO FURNISH THE DEFINED MATERIALS, SUPPLIES AND SERVICES TO THE CITY OF TUPELO, MISSISSIPPI FOR THE PRICES AS SPECIFIED HEREIN. BIDDER AGREES TO SPECIFIED PRICES TO BE PROVIDED TO THE CITY UNTIL THE END OF THE PROJECT. FURTHERMORE, BIDDER AGREES TO ALL TERMS & CONDITIONS AS DEFINED IN THE CONTRACT DOCUMENTS FOR THIS PROJECT.

RESPECTFULLY SUBMITTED BY: Gregory Companies LLC, dba Murphree Paving
(PLEASE PRINT)

SIGNATURE: 

NAME AND TITLE: Drew Moore - President
(PLEASE PRINT)

(SEAL)
 IF BY CORPORATION

ADDRESS: 1138 D.L. Collyers Drive
Tupelo, MS 38801

PHONE NUMBER: 662-844-2331

CORPORATE CERTIFICATE

(To be executed if BIDDER is a Corporation)

I, _____ certify that I am the Secretary of the Corporation named as CONTRACTOR in the foregoing Proposal; that _____ who signed said Proposal on behalf of the CONTRACTOR, was then _____ of said Corporation; that said Proposal was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

Name: _____

Title: _____

Signature: _____

Date: _____

(CORPORATE SEAL)

PARTNERSHIP CERTIFICATE

(To be executed if BIDDER is a Partnership)

STATE OF _____

COUNTY OF _____

On this ____ day of _____, 2022, before me personally appeared _____, known to be and known by me to be the person who executed the above instrument, who being by me first duly sworn, did depose and say that he is general partner in the firm of:

_____; That said firm consists of himself and ; and that he executed the foregoing instrument for and on behalf of said firm for the uses and purposes stated herein.

Signature _____

Title _____

(SEAL)

Sworn before me this __ day of _____, 2022.

_____, Notary Public

My commission expires _____

LIMITED LIABILITY COMPANY CERTIFICATE

(To be executed if BIDDER is a LLC)

I, the undersigned Drew Moore, hereby certify that I am the Manager of Gregory Companies LLC (the "Company") or if the Company does not have a Manager, a Member of the Company with full power and authority to bind the Company; that Drew Moore who executed the Proposal on behalf of the Company is President of the Company with full power and authority to execute same on behalf of the Company, and that the Proposal and the Contract, if awarded to the Company, are within the powers and authority of the Company.

Signature Drew Moore

Title President

(SEAL)

Sworn before me this 20th day of April, 2022.

Rebecca Hayes, Notary Public

My commission expires Jan. 12, 2025



NONRESIDENT BIDDER CERTIFICATE
(to be executed if a BIDDER is a nonresident)

I, _____, hereby certify that the CONTRACTOR,
_____ is domiciled in the State of _____

and (check and complete one):

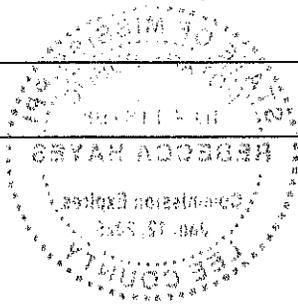
() attached is a copy of the State of _____'s current law pertaining to the treatment of nonresident CONTRACTORS. Paragraph _____, page _____ of said law grants resident CONTRACTORS a _____ percent preference over nonresident CONTRACTORS for similar projects.

() the State of _____ has no current law pertaining to the treatment of nonresident contractors.

() I claim "resident contractor" status based upon having been qualified to do business in this state and having maintained a permanent full-time office in the State of Mississippi for two (2) years prior to January 1, 1986. Proof of such claim must be submitted and approved before contract is signed.

Signature _____

Title _____



(SEAL)

Sworn before me this ___ day of _____, 2022.

_____, Notary Public

My commission expires _____

NON-COLLUSION AFFIDAVIT
(TO BE EXECUTED IN DUPLICATE)

STATE OF MISSISSIPPI
COUNTY OF Lee

I, Drew Moore
(name of person signing affidavit)

individually, and in my capacity as President
(title)

of Gregory Companies LLC, dba Murphree Paving
(name of firm, partnership, limited liability company, or corporation.)

being duly sworn, on oath do depose and say as follows:

(a) That Gregory Companies LLC, dba Murphree Paving, Bidder on the "LOCAL STREET MAINTENANCE MILL & OVERLAY – 2022 ANNUAL BID" for Tupelo, MS, has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

Signature [Handwritten Signature]

Title president

(SEAL)
Sworn before me this 20th day of April, 2022.

Rebecca Hayes, Notary Public
My commission expires Jan. 12, 2025



NOTE: FAILURE TO PROPERLY SIGN AND NOTARIZE THIS AFFIDAVIT WILL DISQUALIFY THE BID.

NON-COLLUSION AFFIDAVIT
(TO BE EXECUTED IN DUPLICATE)

STATE OF MISSISSIPPI
COUNTY OF Lee

I, Brew Moore
(name of person signing affidavit)

individually, and in my capacity as President
(title)

of Gregory Companies LLC dba Murphy Paving
(name of firm, partnership, limited liability company, or corporation.)

being duly sworn, on oath do depose and say as follows:

(a) That Gregory Companies LLC dba Murphy Paving Bidder on the "LOCAL STREET MAINTENANCE MILL & OVERLAY - 2022 ANNUAL BID" for Tupelo, MS has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

Signature Brew Moore

Title president

(SEAL)
Sworn before me this 20th day of April, 2022.
Rebecca Hayes, Notary Public
My commission expires Jan. 12, 2025



NOTE: FAILURE TO PROPERLY SIGN AND NOTARIZE THIS AFFIDAVIT WILL DISQUALIFY THE BID.

END OF SECTION

ADDENDUM #1

**City of Tupelo, Mississippi
 Local Street Maintenance
 Mill & Overlay Program - 2022 Annual Bid
 Bid No. 2022-013PW**

April 12, 2022

The Contract Documents, Plans and Specifications shall be amended/clarified as set forth herein below:

1. Remove the second sentence of the third paragraph of *Section A – Advertisement* and replace with the following: “A Pre-Bid Conference will be held at **1:00 pm local time on Thursday, April 14, 2022** at the Tupelo Public Works Department located at 604 Crossover Road in Tupelo, Mississippi.”
2. Remove the first sentence of paragraph 1. A. of *Section B – Information to Bidders* and replace with the following: “A Pre-Bid Conferenced will be held at **1:00 pm local time on Thursday, April 14, 2022** at the Tupelo Public Works Department located at 604 Crossover Road in Tupelo, Mississippi.”
3. Remove sheets C-1 thru C-7 of *Section C – General Conditions of Work* and replace with the attached sheets C-1 thru C-7 dated April 12, 2022 (*Addendum No. 1*) that includes additional descriptions for short run patch work and corresponding pay items.
4. Remove the *Bid Form (Sheet D-4)* from Section D – Proposal and replace with the attached Bid Form (Sheet D-4) that includes new pay items associated with short run patch work.

Bidders shall acknowledge receipt of this addendum on Page D-1 of the Proposal Form.

(s/b) Dustin D. Dabbs
 Dustin D. Dabbs, P.E.
 Project Manager

Dabbs Corporation

Addendum #1 – 2022-013PW

PROPOSAL

Proposal of APAC-Mississippi, Inc. (hereinafter called "BIDDER"), organized and existing under the laws of the State of DELAWARE doing business as a (corporation, partnership, limited liability company, or individual) to **TUPELO, MS**, (hereinafter called "OWNER"). In compliance with your advertisement for Bids, BIDDER, hereby proposes to perform all WORK for construction of

"LOCAL STREET MAINTENANCE MILL & OVERLAY PROGRAM – 2022 ANNUAL BID"

in strict accordance with the CONTRACT DOCUMENTS, within the time set forth herein, and at the prices stated below. By submission of the BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been developed independently, without consultation, communication or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in a written "NOTICE TO PROCEED" and to fully complete the Project within 214 consecutive calendar days thereafter. BIDDER further agrees to pay as liquidated damages, the sum of \$300 for each consecutive calendar day thereafter as provided for elsewhere in these CONTRACT DOCUMENTS.

BIDDER ACKNOWLEDGES receipt of the following ADDENDA:

NUMBER: 1 DATE: APRIL 12, 2022

NUMBER: _____ DATE: _____

NUMBER: _____ DATE: _____

NUMBER: _____ DATE: _____

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to this bid.

BIDDER understands that the quantities mentioned below are approximate only and are subject to either increase or decrease, and hereby proposes to perform any increased or decreased quantities of work at the Unit Price Bid.

In accordance with the requirements of the Plans, Specifications and Contract Documents, BIDDER proposes to furnish all necessary materials, equipment, labor, tools and other means of construction and to construct the Project in accordance with the Contract Documents within the specified Contract Time for the following Unit Prices specified.

BIDDER further agrees to execute the contract agreement as bound herein within ten (10) days after receipt of contract forms from the OWNER.

BIDDER agrees to pay as liquidated damages the amount provided herein for each consecutive calendar day after the Contract completion date specified in a written "NOTICE TO PROCEED" that he fails to complete the work unless the Contract Time is extended by a written Change Order.

BIDDER also proposes to execute a Performance Bond and a Payment Bond, as shown in the Specifications, each in an amount of not less than **one hundred percent (100%)** of the total of the Base Bid. These Bonds shall not only serve to guarantee the completion of the work on the BIDDERS part, but also to guarantee the excellence of both workmanship and materials until the work is finally accepted.

BIDDER encloses a Bid Bond or Certified Check for 5% of Base Bid Amount DOLLARS (\$ Five percent of Bid Amount) and hereby agree that in case of failure to execute the Contract and furnish the required Bonds within (10) days after the Receipt of Contract Forms, the amount of this Certified Check or Bid Bond will be forfeited to the OWNER, as liquidated damages arising out of his failure to execute the Contract as proposed.

It is understood that in case BIDDER is awarded the work, the Certified Check or Bid Bond submitted as Bid security will be returned as stipulated in the Specifications.

Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provision of the Equal Opportunity Clause set forth in the Federal Requirements, if applicable.

The low BIDDER shall supply the names and address of major MATERIAL SUPPLIERS AND SUBCONTRACTORS when required to do so by the OWNER.

Inspection trips for prospective BIDDERS will be coordinated thru OWNER prior to submission of proposal.

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices or base bid amount: **SEE PAGE D-4 FOR BID ITEMS.**

NOTES:

1. Unit price amounts are to be shown in figures where indicated. Where a discrepancy in the unit price and the extension of any items occurs, the unit price will govern.
2. Unit prices shall include all labor, materials, bonding, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.
3. Any erasure, change or alteration of any kind must be initialed by the BIDDER.
4. Bid prices shall include sales tax and all other applicable taxes and fees.
5. Any item of work not specified on the Proposal as a separate pay item or indicated as an absorbed cost in a pay item but which is incidental to completion of the work shall be considered as an absorbed cost with full compensation included in the unit price bid for the particular item involved.
6. OWNER reserves the right to award any combination of base and additive alternate bids (if any) it deems advantageous and in the event that all specified bid item units are lump sum (LS), the OWNER reserves the right to delete any such item or combination of such items from the project. The OWNER further reserves the right to delete any item or items desired from the Bid Schedule after the Contract has been awarded. Any deletions, if any made, shall be by Change Order and BIDDER hereby agrees to accept such Change Orders.

SECTION D - BID FORM
TUPELO PUBLIC WORKS BID NO. 2022-013PW
LOCAL STREET MAINTENANCE
MILL & OVERLAY PROGRAM - 2022 ANNUAL BID
MARCH, 2022

ITEM NO.	DESCRIPTION	UNIT	QNTY.	UNIT COST	TOTAL COST
1	Cold Milling, All Depths	SY	192,700	\$ 7.25	\$ 1,397,075.00
2	Base Repair Cold Milling (Short Run Work)	SY	2,000	\$ 80.00	\$ 160,000.00
3	Asphalt Surface Course, 9.5 mm Mix	TON	21,200	\$ 180.00	\$ 3,816,000.00
4	Asphalt Base Course, 19 mm Mix (Short Run Paving)	TON	300	\$ 500.00	\$ 150,000.00
5	Granular Shoulder Material, In Place	CY	1	\$ 1,500.00	\$ 1,500.00
6	4" Temporary Traffic Stripe, Cont. White	LF	1	\$ 5.00	\$ 5.00
7	4" Temporary Traffic Stripe, Cont. Yellow	LF	1	\$ 5.00	\$ 5.00
GRAND TOTAL					\$ 5,524,585.00

NOTE: QUANTITIES REPRESENTED HEREIN ARE NOT NECESSARILY ACTUAL QUANTITIES, BUT ARE ESTIMATED BASED ON PROPOSED PROJECT CONDITIONS. THE TEMPORARY STRIPING QUANTITIES WILL VARY BASED ON CONDITIONS IN THE FIELD; THE QUANTITIES INCLUDED ON THE BID FORM FOR THE TEMPORARY STRIPING PAY ITEMS ARE PROVIDED IN ORDER TO ESTABLISH A UNIT PRICE FOR THE TERM BID WORK. THE CONTRACTOR AGREES TO PROVIDE ALL PAY ITEMS AS DIRECTED IN THE FIELD FOR THE UNIT PRICES INCLUDED ON THE BID FORM.

IN ACCORDANCE WITH THE PUBLISHED BID NOTICE, GENERAL CONDITIONS OF WORK AND CONTRACT DOCUMENTS FOR THE REFERENCED BID, THE UNDERSIGNED DOES HEREBY AGREE TO FURNISH THE DEFINED MATERIALS, SUPPLIES AND SERVICES TO THE CITY OF TUPELO, MISSISSIPPI FOR THE PRICES AS SPECIFIED HEREIN. BIDDER AGREES TO SPECIFIED PRICES TO BE PROVIDED TO THE CITY UNTIL THE END OF THE PROJECT. FURTHERMORE, BIDDER AGREES TO ALL TERMS & CONDITIONS AS DEFINED IN THE CONTRACT DOCUMENTS FOR THIS PROJECT.

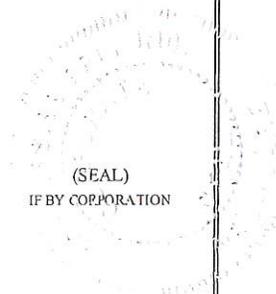
RESPECTFULLY SUBMITTED BY: APAC-Mississippi, Inc.
(PLEASE PRINT)

SIGNATURE: *Adam J Wyers*

NAME AND TITLE: ADAM J WYERS ESTIMATOR
(PLEASE PRINT)

ADDRESS: P.O. BOX 24508
JACKSON, MS 39225

PHONE NUMBER: 601-376-4000



(SEAL)
 IF BY CORPORATION

CORPORATE CERTIFICATE

(To be executed if BIDDER is a Corporation)

I, JERRY DOUELL certify that I am the Secretary of the Corporation named as CONTRACTOR in the foregoing Proposal; that ADAM J WYERS who signed said Proposal on behalf of the CONTRACTOR, was then ESTIMATOR of said Corporation; that said Proposal was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

Name: JERRY DOUELL

Title: SECRETARY

Signature: Jerry Douell

Date: APRIL 7, 2022

(CORPORATE SEAL)

PARTNERSHIP CERTIFICATE

(To be executed if BIDDER is a Partnership)

STATE OF _____

COUNTY OF _____

On this ____ day of _____, 2022, before me personally appeared _____, known to be and known by me to be the person who executed the above instrument, who being by me first duly sworn, did depose and say that he is general partner in the firm of:

_____; That said firm consists of himself and ; and that he executed the foregoing instrument for and on behalf of said firm for the uses and purposes stated herein.

Signature _____

Title _____

(SEAL)

Sworn before me this __ day of _____, 2022.

_____, Notary Public

My commission expires _____

LIMITED LIABILITY COMPANY CERTIFICATE

(To be executed if BIDDER is a LLC)

I, the undersigned _____, hereby certify that I am the Manager of _____ (the "Company") or if the Company does not have a Manager, a Member of the Company with full power and authority to bind the Company; that _____ who executed the Proposal on behalf of the Company is _____ of the Company with full power and authority to execute same on behalf of the Company, and that the Proposal and the Contract, if awarded to the Company, are within the powers and authority of the Company.

Signature _____

Title _____

(SEAL)

Sworn before me this ___ day of _____, 2022.

_____, Notary Public

My commission expires _____

NONRESIDENT BIDDER CERTIFICATE
(to be executed if a BIDDER is a nonresident)

I, _____, hereby certify that the CONTRACTOR,
_____, is domiciled in the State of _____
and (check and complete one):

() attached is a copy of the State of _____'s current law pertaining to the
treatment of nonresident CONTRACTORS. Paragraph _____, page _____ of said law grants
resident CONTRACTORS a _____ percent preference over nonresident CONTRACTORS for
similar projects.

() the State of _____ has no current law pertaining to the treatment of
nonresident contractors.

() I claim "resident contractor" status based upon having been qualified to do business in this
state and having maintained a permanent full-time office in the State of Mississippi for two
(2) years prior to January 1, 1986. Proof of such claim must be submitted and approved
before contract is signed.

Signature _____

Title _____

(SEAL)
Sworn before me this ___ day of _____, 2022.

_____, Notary Public

My commission expires _____

NON-COLLUSION AFFIDAVIT
(TO BE EXECUTED IN DUPLICATE)

STATE OF MISSISSIPPI
COUNTY OF TULARE

I, ADAM J WYERS
(name of person signing affidavit)

individually, and in my capacity as ESTIMATOR
(title)

of APAC Mississippi, Inc.
(name of firm, partnership, limited liability company, or corporation.)

being duly sworn, on oath do depose and say as follows:

(a) That APAC-Mississippi, Inc. Bidder on the "LOCAL STREET MAINTENANCE MILL & OVERLAY – 2022 ANNUAL BID" for Tupelo, MS, has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

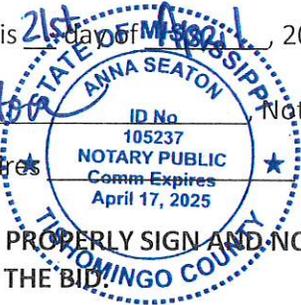
Signature Adam J Wyers

Title ESTIMATOR

(SEAL)
Sworn before me this 21st day of April, 2022.

Anna Seaton Notary Public

My commission expires April 17, 2025



NOTE: FAILURE TO PROPERLY SIGN AND NOTARIZE THIS AFFIDAVIT WILL DISQUALIFY THE BID.

NON-COLLUSION AFFIDAVIT
(TO BE EXECUTED IN DUPLICATE)

STATE OF MISSISSIPPI
COUNTY OF TISHOMINGO

I, ADAM J WYERS
(name of person signing affidavit)

individually, and in my capacity as ESTIMATOR
(title)

of APAC-Mississippi, Inc.
(name of firm, partnership, limited liability company, or corporation.)

being duly sworn, on oath do depose and say as follows:

(a) That APAC-Mississippi, Inc. Bidder on the "LOCAL STREET MAINTENANCE MILL & OVERLAY – 2022 ANNUAL BID" for Tupelo, MS has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

Signature Adam J Wyers

Title ESTIMATOR

(SEAL)
Sworn before me this 21st day of MISSISSIPPI, 2022.

Anna Seaton, Notary Public

My commission expires April 17, 2025



NOTE: FAILURE TO PROPERLY SIGN AND NOTARIZE THIS AFFIDAVIT WILL DISQUALIFY THE BID.

END OF SECTION



AIA Document A310

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we **APAC-Mississippi, Inc.**

as Principal, hereinafter called the Principal ,and FEDERAL INSURANCE COMPANY

a corporation duly organized under the laws of the State of INDIANA
as Surety, hereinafter called the Surety, are held and firmly bound unto **City of Tupelo**
5% Dollars,

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 **Local Street Maintenance Mill & Overlay Program Bid No.2022-013PW**

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee 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 Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee 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 13th day of April,2022.

Jammy Conn
(Witness)

APAC-MISSISSIPPI, INC.
(Principal)
Nathan Killingsworth (Title) President



Jammy Conn
(Witness)

FEDERAL INSURANCE COMPANY
(Surety)
Terry May (Title) Attorney in Charge



SURETY ACKNOWLEDGMENT

STATE OF MISSISSIPPI }
COUNTY OF RANKIN } **SS**

On this 13th day of April, 2022, before me personally came Terry May to me known, who, being by me duly sworn, did depose and say that he is an Attorney-In-Fact of FEDERAL INSURANCE COMPANY the corporation described in and which executed the within instrument; that he knows the corporate seal of said corporation, that the seal affixed to the within instrument is such corporate seal, and that he signed the said instrument and affixed the said seal as Attorney-In-Fact of the Board of Directors of said corporation and by authority of this office under the Standing Resolutions thereof.



Tammy Conn

Notary Public



Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint Andrew S. Atkins, Michael W. Bogue, Dwayne Boyd, Jerry Douell, Winnie F. Ellis, Terry May, Dennis Rogers and James M. Tucker of Jackson, Mississippi

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bid bonds and bid undertakings not to exceed \$ 1,000,000.00 (One Million dollars & zero cents) given or executed in the course of business, but not to include any instruments amending or altering the same nor consents to the modification or alteration of any instrument referred to in said bonds or obligations, on behalf of APAC-MISSISSIPPI, INC. and all Subsidiaries, as principal, in connection with bids or proposals to or with the United States of America, any State or political subdivision thereof or any person, firm or corporation. And the execution of such bid bonds or bid undertakings by such Attorney-in-Fact in the Company's name and on its behalf as surety thereon or otherwise, under its corporate seal, in pursuance of the authority hereby conferred shall, upon delivery thereof, be valid and binding upon the Company.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 5th day of September, 2019.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY
County of Hunterdon ss.

On this 5th day of September, 2019, before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316685
Commission Expires July 16, 2024

Katherine J. Adelaar

Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this April 13, 2022



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary



IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

ADDENDUM #1

City of Tupelo, Mississippi
 Local Street Maintenance
 Mill & Overlay Program - 2022 Annual Bid
 Bid No. 2022-013PW

April 12, 2022

The Contract Documents, Plans and Specifications shall be amended/clarified as set forth herein below:

1. Remove the second sentence of the third paragraph of *Section A – Advertisement* and replace with the following: “A Pre-Bid Conference will be held at **1:00 pm local time on Thursday, April 14, 2022** at the Tupelo Public Works Department located at 604 Crossover Road in Tupelo, Mississippi.”
2. Remove the first sentence of paragraph 1. A. of *Section B – Information to Bidders* and replace with the following: “A Pre-Bid Conferenced will be held at **1:00 pm local time on Thursday, April 14, 2022** at the Tupelo Public Works Department located at 604 Crossover Road in Tupelo, Mississippi.”
3. Remove sheets C-1 thru C-7 of *Section C – General Conditions of Work* and replace with the attached sheets C-1 thru C-7 dated April 12, 2022 (*Addendum No. 1*) that includes additional descriptions for short run patch work and corresponding pay items.
4. Remove the *Bid Form (Sheet D-4)* from Section D – Proposal and replace with the attached Bid Form (Sheet D-4) that includes new pay items associated with short run patch work.

Bidders shall acknowledge receipt of this addendum on Page D-1 of the Proposal Form.

(s/b) Dustin D. Dabbs
 Dustin D. Dabbs, P.E.
 Project Manager

Dabbs Corporation

Addendum #1 – 2022-013PW

SECTION C – GENERAL CONDITIONS OF WORK

CITY OF TUPELO PUBLIC WORKS DEPARTMENT

DATE: April 12, 2022 (*Addendum No. 1*)

SUBJECT: General Conditions / Scope of Work / Project Area

PROJECT: LOCAL STREET MAINTENANCE MILL & OVERLAY PROGRAM - 2022 ANNUAL BID

The Contract Documents do not include a set of construction plans/project drawings for the proposed improvements that shall be provided by the Contractor for this Project. Any references to plans/project drawings in this section or within the Contract Documents or Technical Specifications shall be disregarded. The Scope of Work shall not supersede the Technical Specifications but shall provide a summary of the existing and proposed conditions that are included as part of the proposed project.

Generally, this contract is to provide construction work to complete roadway milling and asphalt overlay improvements on existing local streets within the City of Tupelo as directed by the Tupelo Public Works Department. This work shall include cold milling, asphalt paving, temporary striping and shoulder work as necessary to provide a finished project in compliance with the technical specifications and the directives provided by the Owner for each individual work order.

All proposed improvements shall be located within the existing rights-of-way (ROW) for local streets in the City of Tupelo. Improvements shall be in accordance with the directives, specifications and applicable local, state and federal guidelines associated with providing/installing the roadway improvements. Any work, storage, parking, mobilization, etc. conducted on private property shall be coordinated expressly by the Contractor and approved by the property owner separate of this Contract. The City of Tupelo does not and shall not direct, authorize, approve, etc. work or other supporting activities to be conducted/completed on any property not owned by the City of Tupelo.

Work on the project shall consist of the following items included on the bid form and per the directives included herein, technical specifications and manufacturer’s material recommendations:

PROJECT PAY ITEMS:

1. **COLD MILLING:** The Contractor shall provide the labor, equipment, etc. required to cold mill existing asphalt streets and intersections as required to the completed the work as defined on the attached Primary Street List. Milling shall be completed in coordination with the asphalt overlay improvements included as part of this Contract.

The Average depth for milling shall be two (2) inches but may vary based on the requirements for each street, or portion thereof, as defined in the field by the Owner and/or Engineer. Excess materials shall be removed from the project site by the Contractor at no additional cost to the Owner. The first 250 +/- tons of mill material shall be provided to the City of Tupelo for future utilization. This material shall be hauled by the Contractor and stockpiled to the existing City materials yard on Commerce Street or as directed by the Owner. All other excess materials shall be removed and disposed of by the Contractor. No separate pay will be provided for hauling, stockpiling or disposing of milled material. If required, saw cutting shall be an absorbed item.

2. **BASE REPAIR COLD MILLING (Short Run Work):** The Contractor shall provide the labor, equipment, etc. required to cold mill existing asphalt streets and/or as required to mill existing dig out patch areas filled with granular material as necessary to complete base repairs and install Asphalt Base Course, 19mm mix prior to the final surface course overlay. This pay item shall only be used in association with Short Run paving & patch work as defined in this Section for point repairs / patch work. Normal milling along curbs, gutters, transition areas, and full width street milling shall all be measured and paid under the Cold Milling item on the Bid Form (Item No. 1) as required to complete the work as defined on the attached Primary Project List. Base Repair Cold Milling shall be completed in coordination with asphalt base course installation in areas defined by the Owner prior to the final overlay of each street. The Average depth for milling shall be three (3) inches. Excess materials shall be removed from the project site by the Contractor at no additional cost to the Owner.
3. **ASPHALT SURFACE COURSE, 9.5 MM MIX:** The Contractor shall provide the materials, labor and equipment to pave existing local roadways as directed by the Tupelo Public Works Department. The asphalt utilized for this project shall be a surface course mix provided and installed by the Contractor in accordance with the MDOT specifications. The surface course material provided by the Contractor and placed in the field may be 9.5 mm mix, SC-1 mix design or a similar equivalent mix design approved in writing by the City Engineer, Mr. Dennis Bonds, PE. The mix design shall be submitted by the Contractor and approved by the City Engineer prior to beginning any work on the project for the specific roadway improvements. The minimum course thickness shall be 1.5" and the maximum thickness shall be 2.5". The proposed thickness for all asphalt overlays for this Project shall be 2.0 inches minimum, unless otherwise directed by the Engineer for particular streets or portions thereof. The proposed asphalt surface course shall be installed within the limits of the existing roadways unless otherwise directed by the Owner.
4. **ASPHALT BASE COURSE, 19 MM MIX (SHORT RUN PATCH REPAIRS):** The Contractor shall provide the materials, labor and equipment to provide point repairs / base repairs (short run repairs) on existing local roadways as directed by the Tupelo Public Works Department. The asphalt utilized for this pay item shall be a base course mix provided and installed by the Contractor in accordance with the MDOT specifications. The base course material provided by the Contractor and placed in the field may be 19 mm mix, BB-

1 mix design or a similar equivalent mix design approved by the City Engineer, Mr. Dennis Bonds, PE. The mix design shall be submitted by the Contractor and approved by the Owner prior to beginning any work on the project for the specific roadway improvements. The minimum course thickness shall be 2.0" and the maximum thickness shall be 3.0". Asphalt base course installed under this item shall be as required to repair patches, dig-outs, utility cuts, single lane problems areas, etc. as associated with short-tun work in order to complete base repairs on existing roadways prior to the overlay with the final surface course.

5. GRANULAR MATERIAL FOR SHOULDER WORK: If required to meet the specification requirements along roadways with existing granular material shoulders, the Contractor shall install a clay/gravel mix, or soil/gravel mix with similar gradation and material type along existing roadway shoulders at the new edge of pavement following the asphalt overlay. The material, gradation, etc. shall be approved by the Owner prior to delivery to the site and placement in the field. Such work shall only be completed as necessary to promote safety for finished improved streets and shall not be required along most of the proposed roadways included on the Primary Street List. The Contractor shall be paid per cubic yard of material provided and placed in the field per the respective specifications. No other payment shall be made for providing and placing granular shoulder material.
6. 4" TEMPORARY TRAFFIC STRIPE, CONT. WHITE: If directed by the Public Works Department (Jason Rush, Street Dept.), the Contractor shall install temporary striping on local roadways following the completion of the asphalt overlay. All streets included on the primary and/or secondary street lists will not require temporary striping. The contractor shall work with the Public Works Department to determine which streets shall require temporary striping and to determine the requirements for any such striping. The striping shall be installed in solid patterns OR skip patterns as defined by the Owner. The contractor shall be paid per LF of temporary stripe installed, regardless of the pattern utilized.
7. 4" TEMPORARY TRAFFIC STRIPE, CONT. YELLOW: If directed by the Public Works Department (Jason Rush, Street Dept.), the Contractor shall install temporary striping on local roadways following the completion of the asphalt overlay. All streets included on the primary and/or secondary street lists will not require temporary striping. The contractor shall work with the Public Works Department to determine which streets shall require temporary striping and to determine the requirements for any such striping. The striping shall be installed in solid patterns OR skip patterns as defined by the Owner. The contractor shall be paid per LF of temporary stripe installed, regardless of the pattern utilized.

The Contractor shall be required to provide these items for various types of applications to assist the Tupelo Public Works Department in the overall roadway maintenance program efforts. The work shall generally include the following:

FINAL ROADWAY MILL & OVERLAY WORK: This shall constitute the majority of the work to be performed under this Contract. Cold milling and asphalt surface course (9.5 mm mix) work shall be completed on all of the existing streets identified on the Primary Project List included at the end of this section. Cold Milling for this work shall be measured and paid for with Item No. 1 on the Bid Form and overlay work shall include asphalt surface course per Item No. 3 on the Bid Form.

BASE REPAIR MILL & PATCH WORK (SHORT RUN WORK): The Contractor shall provide work on short run areas for small sections of existing streets. This work shall include milling and overlay work related to single lanes, dig out areas, patch work, pipe-culvert/utility pipe crossings, etc. The contractor will mill out existing asphalt or granular material from the defined base repair areas and shall replace the milled out material with asphalt base course. This work shall be identified and directed by the Tupelo Public Works Department in the field and shall only be performed by the Contractor upon the direction and approval of the Engineer and/or Street Maintenance Director. Areas shall be clearly marked and defined in the field by the Engineer prior to the commencement of milling and/or overlay activities by the Contractor. Cold Milling for short run patch work shall be measured and paid for with Item No. 2 on the Bid Form and base repair work shall include asphalt base course per Item No. 4 on the Bid Form.

The Contractor shall erect and maintain construction signing and barricades along existing City streets as necessary to protect labor, equipment, pedestrians, vehicular traffic etc. Traffic cones, etc. and other safety related devices, equipment, systems, etc. shall be the responsibility of the Contractor. The City and/or Engineer shall not be responsible for advising of said traffic control and/or safety related measures, etc. nor held liable for any issues resulting from same.

The Contractor shall install Temporary Striping as directed by the Owner. Many of the local streets on the street lists shall not require temporary striping following asphalt overlay improvements. Temporary striping shall only be installed on streets with 3 traffic lanes or more or as directed by the Public Works Department and/or Engineer. If required, temporary striping shall be installed by the Contractor within 2 days of the completion of asphalt overlay work for each individual street.

If required, the Contractor shall be responsible for coordinating the location of existing underground utilities via the 811 locate system should any excavation be required as part of the project preparation. Should utilities require relocation, the Contractor shall notify the City and the City shall be responsible for the relocation of existing utilities prior to the commencement of work by the Contractor. Should the Contractor damage existing utilities or other existing improvements, the Contractor shall repair/replace the damaged utilities, existing improvements, etc. at no additional cost to the City.

The Contractor shall complete work as directed and approved by the City of Tupelo Public Works Department. Work shall be confined to project areas located on rights-of-way owned and maintained by the City of Tupelo. Should the Contractor find it necessary to utilize private property for staging, storage, improvements, etc., the Contractor shall be solely responsible for soliciting and procuring the necessary permission/access from the private property owner

prior to commencing any work on said private property. No work shall be completed on MDOT rights-of-way without the approval of the necessary permits from the Mississippi Department of Transportation (MDOT). Should MDOT permits be required to facilitate individual work orders, the City shall be responsible for providing such approved permits.

The Public Works Department will provide a final Primary Street List to the Contractor that will define the roadways that are to be milled and overlaid during the Primary Period of Work. The Contractor shall be required to schedule and attend a Pre-Construction Conference together with the Public Works Department prior to the issuance of the Notice to Proceed. The primary objectives of the conference will be to review the Primary Street List and to discuss the following items: Notice to Proceed, Traffic Control, Safety, Review/Approve Asphalt Mix Design, Liquidated Damages, Secondary Work, etc. Following the Pre-Construction Conference, the Contractor will be afforded the opportunity to coordinate with the Public Works Department representative to inspect each street prior to the issuance of the Notice to Proceed. The City of Tupelo will issue the Notice to Proceed with an effective date no later than June 1, 2022, unless otherwise requested by the Contractor and approved by the Owner.

Upon issuance of the Notice to Proceed by the Owner, the Contractor will initiate the work as defined in the Contract Documents and/or as specified in the Notice to Proceed. Unless a time interval for the Contractor to pull off of the Project is approved by the Owner, the Contractor shall provide a minimum of one crew (milling and/or paving) to be actively working on the Project (including streets on the Primary and/or Secondary Street List provided by the Owner) on a daily basis. If the Contractor has other contracts for similar work with the Owner, each contract and respective requirements for milling/paving crews shall be independent of one another. A separate crew working on another contract shall not constitute the fulfillment of the performance requirements as defined herein.

The Contractor shall provide traffic control measures as required prior to completing work on any street each day. The Contractor shall work daily to complete milling and overlay work so that the work is consecutive from beginning of each street to the end of each street unless weather does not allow. If interrupted by inclement weather, the Contractor shall be required to resume work as soon as site conditions allow. If the Contractor has questions about the site conditions being acceptable for work, the Contractor shall coordinate with the Engineer in this regard for final resolution. If required and approved by the Owner in writing, the Contractor shall be allowed to move off the project temporarily after the completion of an individual street. The suspension of work/construction activities shall not be allowed while milling and/or overlay work for an individual street has been started and remains incomplete. No delays in the work shall be allowed while in the middle of an individual street unless site conditions prevent work from being completed or within the following limits: overlays shall be initiated within 10 days of the completion of cold milling on each street; temporary striping, if required by the Owner, shall be installed within 2 days of the completion of overlay activities.

Should the Contractor complete the milling and overlay work for the streets defined on the Primary Street List and still has time remaining in the contract, the Owner may supplement the Project List

with additional streets to be improved as part of this Project. Priority of any supplemental street improvements shall be as defined by the Owner.

The Primary Street List included at the end of this Section indicates the specific milling and overlay improvements to be completed as part of this project. The Contractor shall be given reasonable time to coordinate and begin the work in accordance with the Notice to Proceed. Once the construction activities are commenced by the Contractor, the work shall be completed in full during the defined Contract Period and be in accordance with the Performance Requirements defined in the Contract Documents. The bidder/Contractor agrees to pay Liquidated Damages in the amount of \$300.00 per day for failure to meet the required Performance Requirements and/or should the roadways defined on the Primary Street List not be completed by the end of the Contract Time as defined in the executed Contract. The Performance Requirements and related Liquidated Damages are defined in Paragraph 24 - 25 of Section B – Information for Bidders included in the Contract Documents.

Based on need and project funding, the Tupelo Public Works Department may issue a Secondary Street List to define additional roadways that are to be milled and overlaid as part of this Contract. Work on the Secondary Street List will not commence until after the Primary Street List has been completed by the Contractor. The Public Works Department will coordinate with the Contractor to define the roadways to be milled and/or overlaid as part of the Secondary Project List. The City reserves the right to add projects to the Secondary Project List at any time following the Primary Work Period so long as there is adequate time for the work to be completed during the Contract Period as defined in the Contract. The Public Works Department may prioritize the order of work for streets included on the Secondary Project List.

PROJECT COORDINATION BETWEEN CONTRACTOR & OWNER / ENGINEER shall be necessary for all facets of the proposed project whether discussed within Section C or not. Some additional items for consideration by the Contractor with respect to additional coordination with the Owner and Engineer during the Project that will be necessary to facilitate the work based on conditions that are necessary for the City of Tupelo and required by the Contractor for this Project. Additional items that will require specific coordination during the Project include:

The City of Tupelo will communicate with local Railroad (RR) Companies (i.e. KCS, BNSF) with respect to coordination of project activities and RR inspections / personnel. The Contractor will not be required to provide RR personnel for activities completed adjacent to local RR mainlines. However, it is the responsibility of the Contractor to coordinate with the Owner and Engineer in advance of completing any work within 100 LF of an existing RR in order to allow the Owner the opportunity to adequately coordinate with the appropriate RR company. Any fees associated with the RR inspections, etc. shall be paid for by the OWNER and shall not be the responsibility of the Contractor.

The City of Tupelo has other on-going contracts for street/roadway maintenance and related drainage improvements, etc. In some cases, the Contractor shall be required to coordinate with the Owner and Engineer to schedule work so that overall street maintenance objectives may be achieved for local streets. Such coordination may include dig outs, short-run patching/paving,

drainage pipe/inlets, curb & gutter and other related work that the City may require under other project or term contracts.

ASPHALT LOAD TICKETS shall be provided by the Contractor to the Owner on a daily basis. The Contractor shall note on each load ticket in the field the actual street name that the Contractor is working on when the ticket is delivered/accepted from the truck driver. Load tickets shall be divided by individual street and provided to the Owner separated by street name. If additional work is required for a street beyond one day, then the Contractor may retain copies of tickets until such time as the particular street is completed and, then, shall provide the tickets separated by street within 24 hours after completion of the street. The Engineer may request copies of load tickets at the end of each day, even if it is prior to the completion of an individual street, if preferred. The Contractor shall not submit for payment for streets and corresponding asphalt tonnages unless the tickets have been separated and submitted to the Owner for that individual street.

The Contractor shall utilize the formats provided for submitting pay estimates / applications as represented by the forms included in Section H – Standard Pay Estimate Sheets. Additional information may be provided by the Contractor, if necessary, or as requested by the Owner or Engineer. But no pay estimate / application will be considered for payment unless the standard pay estimate sheets are included as part of the pay request package.

(The Primary Street List is included on Sheets C-8 thru C-10)

PROPOSAL

Proposal of Jalco Contracting Co Inc (hereinafter called "BIDDER"), organized and existing under the laws of the State of Mississippi doing business as a (corporation, partnership, limited liability company, or individual) to **TUPELO, MS**, (hereinafter called "OWNER"). In compliance with your advertisement for Bids, BIDDER, hereby proposes to perform all WORK for construction of

"LOCAL STREET MAINTENANCE MILL & OVERLAY PROGRAM – 2022 ANNUAL BID"

in strict accordance with the CONTRACT DOCUMENTS, within the time set forth herein, and at the prices stated below. By submission of the BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been developed independently, without consultation, communication or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in a written "NOTICE TO PROCEED" and to fully complete the Project within **214** consecutive calendar days thereafter. BIDDER further agrees to pay as liquidated damages, the sum of **\$300** for each consecutive calendar day thereafter as provided for elsewhere in these CONTRACT DOCUMENTS.

BIDDER ACKNOWLEDGES receipt of the following ADDENDA:

NUMBER: #1 DATE: 4/12/2022
NUMBER: _____ DATE: _____
NUMBER: _____ DATE: _____
NUMBER: _____ DATE: _____

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to this bid.

BIDDER understands that the quantities mentioned below are approximate only and are subject to either increase or decrease, and hereby proposes to perform any increased or decreased quantities of work at the Unit Price Bid.

In accordance with the requirements of the Plans, Specifications and Contract Documents, BIDDER proposes to furnish all necessary materials, equipment, labor, tools and other means of construction and to construct the Project in accordance with the Contract Documents within the specified Contract Time for the following Unit Prices specified.

BIDDER further agrees to execute the contract agreement as bound herein within ten (10) days after receipt of contract forms from the OWNER.

BIDDER agrees to pay as liquidated damages the amount provided herein for each consecutive calendar day after the Contract completion date specified in a written "NOTICE TO PROCEED" that he fails to complete the work unless the Contract Time is extended by a written Change Order.

BIDDER also proposes to execute a Performance Bond and a Payment Bond, as shown in the Specifications, each in an amount of not less than **one hundred percent (100%)** of the total of the Base Bid. These Bonds shall not only serve to guarantee the completion of the work on the BIDDERS part, but also to guarantee the excellence of both workmanship and materials until the work is finally accepted.

BIDDER encloses a Bid Bond or Certified Check for 5% of Base Bid Amount DOLLARS (\$_____) and hereby agree that in case of failure to execute the Contract and furnish the required Bonds within (10) days after the Receipt of Contract Forms, the amount of this Certified Check or Bid Bond will be forfeited to the OWNER, as liquidated damages arising out of his failure to execute the Contract as proposed.

It is understood that in case BIDDER is awarded the work, the Certified Check or Bid Bond submitted as Bid security will be returned as stipulated in the Specifications.

Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provision of the Equal Opportunity Clause set forth in the Federal Requirements, if applicable.

The low BIDDER shall supply the names and address of major MATERIAL SUPPLIERS AND SUBCONTRACTORS when required to do so by the OWNER.

Inspection trips for prospective BIDDERS will be coordinated thru OWNER prior to submission of proposal.

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices or base bid amount: **SEE PAGE D-4 FOR BID ITEMS.**

NOTES:

1. Unit price amounts are to be shown in figures where indicated. Where a discrepancy in the unit price and the extension of any items occurs, the unit price will govern.
2. Unit prices shall include all labor, materials, bonding, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.
3. Any erasure, change or alteration of any kind must be initialed by the BIDDER.
4. Bid prices shall include sales tax and all other applicable taxes and fees.
5. Any item of work not specified on the Proposal as a separate pay item or indicated as an absorbed cost in a pay item but which is incidental to completion of the work shall be considered as an absorbed cost with full compensation included in the unit price bid for the particular item involved.
6. OWNER reserves the right to award any combination of base and additive alternate bids (if any) it deems advantageous and in the event that all specified bid item units are lump sum (LS), the OWNER reserves the right to delete any such item or combination of such items from the project. The OWNER further reserves the right to delete any item or items desired from the Bid Schedule after the Contract has been awarded. Any deletions, if any made, shall be by Change Order and BIDDER hereby agrees to accept such Change Orders.

**SECTION D - BID FORM
TUPELO PUBLIC WORKS BID NO. 2022-013PW
LOCAL STREET MAINTENANCE
MILL & OVERLAY PROGRAM - 2022 ANNUAL BID
MARCH, 2022**

ITEM NO.	DESCRIPTION	UNIT	QNTY.	UNIT COST	TOTAL COST
1	Cold Milling, All Depths	SY	192,700	5.00	963,500.00
2	Base Repair Cold Milling (Short Run Work)	SY	2,000	25.00	50,000.00
3	Asphalt Surface Course, 9.5 mm Mix	TON	21,200	158.00	3,349,600.00
4	Asphalt Base Course, 19 mm Mix (Short Run Paving)	TON	300	250.00	75,000.00
5	Granular Shoulder Material, In Place	CY	1	200.00	200.00
6	4" Temporary Traffic Stripe, Cont. White	LF	1	.50	.50
7	4" Temporary Traffic Stripe, Cont. Yellow	LF	1	.50	.50
GRAND TOTAL					4,438,801.00

NOTE: QUANTITIES REPRESENTED HEREIN ARE NOT NECESSARILY ACTUAL QUANTITIES, BUT ARE ESTIMATED BASED ON PROPOSED PROJECT CONDITIONS. THE TEMPORARY STRIPING QUANTITIES WILL VARY BASED ON CONDITIONS IN THE FIELD; THE QUANTITIES INCLUDED ON THE BID FORM FOR THE TEMPORARY STRIPING PAY ITEMS ARE PROVIDED IN ORDER TO ESTABLISH A UNIT PRICE FOR THE TERM BID WORK. THE CONTRACTOR AGREES TO PROVIDE ALL PAY ITEMS AS DIRECTED IN THE FIELD FOR THE UNIT PRICES INCLUDED ON THE BID FORM.

IN ACCORDANCE WITH THE PUBLISHED BID NOTICE, GENERAL CONDITIONS OF WORK AND CONTRACT DOCUMENTS FOR THE REFERENCED BID, THE UNDERSIGNED DOES HEREBY AGREE TO FURNISH THE DEFINED MATERIALS, SUPPLIES AND SERVICES TO THE CITY OF TUPELO, MISSISSIPPI FOR THE PRICES AS SPECIFIED HEREIN. BIDDER AGREES TO SPECIFIED PRICES TO BE PROVIDED TO THE CITY UNTIL THE END OF THE PROJECT. FURTHERMORE, BIDDER AGREES TO ALL TERMS & CONDITIONS AS DEFINED IN THE CONTRACT DOCUMENTS FOR THIS PROJECT.

RESPECTFULLY SUBMITTED BY: Falcon Contracting Co., Inc.
(PLEASE PRINT)

SIGNATURE: [Signature]

NAME AND TITLE: Will Suedenberg President
(PLEASE PRINT)

ADDRESS: P.O. Box 5044
Columbus, MS 39704

PHONE NUMBER: 662-327-2053



**SECTION D - BID FORM
 TUPELO PUBLIC WORKS BID NO. 2022-013PW
 LOCAL STREET MAINTENANCE
 MILL & OVERLAY PROGRAM - 2022 ANNUAL BID
 MARCH, 2022**

ITEM NO.	DESCRIPTION	UNIT	QNTY.	UNIT COST	TOTAL COST
1	Cold Milling, All Depths	SY	192,700	5.00	963,500.00
2	Base Repair Cold Milling (Short Run Work)	TON	2,000	25.00	50,000.00
3	Asphalt Surface Course, 9.5 mm Mix	TON	21,200	158.00	3,349,600.00
4	Asphalt Base Course, 19 mm Mix (Short Run Paving)	TON	300	250.00	75,000.00
5	Granular Shoulder Material, In Place	CY	1	200.00	200.00
6	4" Temporary Traffic Stripe, Cont. White	LF	1	.50	.50
7	4" Temporary Traffic Stripe, Cont. Yellow	LF	1	.50	.50
GRAND TOTAL					4,438,301.00

NOTE: QUANTITIES REPRESENTED HEREIN ARE NOT NECESSARILY ACTUAL QUANTITIES, BUT ARE ESTIMATED BASED ON PROPOSED PROJECT CONDITIONS. THE TEMPORARY STRIPING QUANTITIES WILL VARY BASED ON CONDITIONS IN THE FIELD; THE QUANTITIES INCLUDED ON THE BID FORM FOR THE TEMPORARY STRIPING PAY ITEMS ARE PROVIDED IN ORDER TO ESTABLISH A UNIT PRICE FOR THE TERM BID WORK. THE CONTRACTOR AGREES TO PROVIDE ALL PAY ITEMS AS DIRECTED IN THE FIELD FOR THE UNIT PRICES INCLUDED ON THE BID FORM.

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RESPECTFULLY SUBMITTED BY: Falcon Contracting Co, Inc.
(PLEASE PRINT)

SIGNATURE: *Will*

NAME AND TITLE: Will Swedberg President
(PLEASE PRINT)

ADDRESS: P.O. Box 5044
Columbus, MS 39704

PHONE NUMBER: 662-327-2053



SECTION D - BID FORM
TUPELO PUBLIC WORKS BID NO. 2022-013PW
LOCAL STREET MAINTENANCE
MILL & OVERLAY PROGRAM - 2022 ANNUAL BID
MARCH, 2022

ITEM NO.	DESCRIPTION	UNIT	QNTY.	UNIT COST	TOTAL COST
1	Cold Milling, All Depths	SY	192,700		
2	Asphalt Surface Course, 9.5 mm Min	TON	21,200		
3	Granular Shoulder Material, In Place	CY	1		
4	4" Temporary Traffic Stripe, Cont. White	LF	1		
5	4" Temporary Traffic Stripe, Cont. Yellow	LF	1		
GRAND TOTAL					

NOTE: QUANTITIES REPRESENTED HEREIN ARE NOT NECESSARILY ACTUAL QUANTITIES, BUT ARE ESTIMATED BASED ON PROPOSED PROJECT CONDITIONS. THE TEMPORARY STRIPING QUANTITIES WILL VARY BASED ON CONDITIONS IN THE FIELD; THE QUANTITIES INCLUDED ON THE BID FORM FOR THE TEMPORARY STRIPING PAY ITEMS ARE PROVIDED IN ORDER TO ESTABLISH A UNIT PRICE FOR THE TERM BID WORK. THE CONTRACTOR AGREES TO PROVIDE ALL PAY ITEMS AS DIRECTED IN THE FIELD FOR THE UNIT PRICES INCLUDED ON THE BID FORM.

IN ACCORDANCE WITH THE PUBLISHED BID NOTICE, GENERAL CONDITIONS OF WORK AND CONTRACT DOCUMENTS FOR THE REFERENCED BID, THE UNDERSIGNED DOES HEREBY AGREE TO FURNISH THE DEFINED MATERIALS, SUPPLIES AND SERVICES TO THE CITY OF TUPELO, MISSISSIPPI FOR THE PRICES AS SPECIFIED HEREIN. BIDDER AGREES TO SPECIFIED PRICES TO BE PROVIDED TO THE CITY UNTIL THE END OF THE PROJECT. FURTHERMORE, BIDDER AGREES TO ALL TERMS & CONDITIONS AS DEFINED IN THE CONTRACT DOCUMENTS FOR THIS PROJECT.

RESPECTFULLY SUBMITTED BY: Falcon Contracting Co Inc
(PLEASE PRINT)

SIGNATURE: _____

NAME AND TITLE: Will Swendenburg President
(PLEASE PRINT)

ADDRESS: PO Box 5044
Columbus, MS
39704

PHONE NUMBER: (662) 327-2053



CORPORATE CERTIFICATE

(To be executed if BIDDER is a Corporation)

I, Doug Phillips certify that I am the Secretary of the Corporation named as CONTRACTOR in the foregoing Proposal; that Will Swedenburg who signed said Proposal on behalf of the CONTRACTOR, was then President of said Corporation; that said Proposal was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

Name: Doug Phillips

Title: Sec. / Treas

Signature: [Handwritten Signature]

Date: April 21, 2022



PARTNERSHIP CERTIFICATE

(To be executed if BIDDER is a Partnership)

STATE OF _____

COUNTY OF _____

On this ____ day of _____, 2022, before me personally appeared _____, known to be and known by me to be the person who executed the above instrument, who being by me first duly sworn, did depose and say that he is general partner in the firm of:

_____; That said firm consists of himself and _____; and that he executed the foregoing instrument for and on behalf of said firm for the uses and purposes stated herein.

Signature _____

Title _____

(SEAL)

Sworn before me this __ day of _____, 2022.

_____, Notary Public

My commission expires _____

LIMITED LIABILITY COMPANY CERTIFICATE

(To be executed if BIDDER is a LLC)

I, the undersigned _____, hereby certify that I am the Manager of _____ (the "Company") or if the Company does not have a Manager, a Member of the Company with full power and authority to bind the Company; that _____ who executed the Proposal on behalf of the Company is _____ of the Company with full power and authority to execute same on behalf of the Company, and that the Proposal and the Contract, if awarded to the Company, are within the powers and authority of the Company.

Signature _____

Title _____

(SEAL)

Sworn before me this __ day of _____, 2022.

_____, Notary Public

My commission expires _____

NONRESIDENT BIDDER CERTIFICATE

(to be executed if a BIDDER is a nonresident)

I, _____, hereby certify that the CONTRACTOR,
_____, is domiciled in the State of _____

and (check and complete one):

() attached is a copy of the State of _____'s current law pertaining to the treatment of nonresident CONTRACTORS. Paragraph _____, page _____ of said law grants resident CONTRACTORS a _____ percent preference over nonresident CONTRACTORS for similar projects.

() the State of _____ has no current law pertaining to the treatment of nonresident contractors.

() I claim "resident contractor" status based upon having been qualified to do business in this state and having maintained a permanent full-time office in the State of Mississippi for two (2) years prior to January 1, 1986. Proof of such claim must be submitted and approved before contract is signed.

Signature _____

Title _____

(SEAL)

Sworn before me this ___ day of _____, 2022.

_____, Notary Public

My commission expires _____

NON-COLLUSION AFFIDAVIT
(TO BE EXECUTED IN DUPLICATE)

STATE OF MISSISSIPPI
COUNTY OF Lauderdale

I, Will Swedenburg
(name of person signing affidavit)

individually, and in my capacity as President
(title)

of Falcon Contracting Co Inc
(name of firm, partnership, limited liability company, or corporation.)

being duly sworn, on oath do depose and say as follows:

(a) That Falcon Contracting Co, Bidder on the "LOCAL STREET MAINTENANCE MILL & OVERLAY – 2022 ANNUAL BID" for Tupelo, MS, has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

Signature Will S

Title President

(SEAL)
Sworn before me this 21 day of April, 2022.

Kim Gibson, Notary Public

My commission expires _____



NOTE: FAILURE TO PROPERLY SIGN AND NOTARIZE THIS AFFIDAVIT WILL DISQUALIFY THE BID.

NON-COLLUSION AFFIDAVIT
(TO BE EXECUTED IN DUPLICATE)

STATE OF MISSISSIPPI
COUNTY OF Lowndes

I, Will Swedenburg
(name of person signing affidavit)

individually, and in my capacity as President
(title)

of Falcon Contracting Co Inc
(name of firm, partnership, limited liability company, or corporation.)

being duly sworn, on oath do depose and say as follows:

(a) That Falcon Contracting Co Bidder on the "LOCAL STREET MAINTENANCE MILL & OVERLAY – 2022 ANNUAL BID" for Tupelo, MS has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

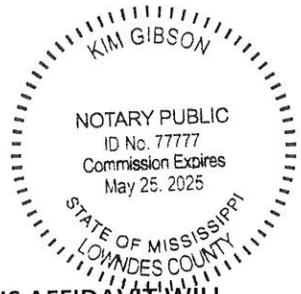
Signature Will

Title President

(SEAL)
Sworn before me this 28th day of April, 2022.

Kim Gibson, Notary Public

My commission expires _____



NOTE: FAILURE TO PROPERLY SIGN AND NOTARIZE THIS AFFIDAVIT WILL DISQUALIFY THE BID.

END OF SECTION

SECTION C – GENERAL CONDITIONS OF WORK

CITY OF TUPELO PUBLIC WORKS DEPARTMENT

DATE: April 12, 2022 (*Addendum No. 1*)

SUBJECT: General Conditions / Scope of Work / Project Area

PROJECT: LOCAL STREET MAINTENANCE MILL & OVERLAY PROGRAM - 2022 ANNUAL BID

The Contract Documents do not include a set of construction plans/project drawings for the proposed improvements that shall be provided by the Contractor for this Project. Any references to plans/project drawings in this section or within the Contract Documents or Technical Specifications shall be disregarded. The Scope of Work shall not supersede the Technical Specifications but shall provide a summary of the existing and proposed conditions that are included as part of the proposed project.

Generally, this contract is to provide construction work to complete roadway milling and asphalt overlay improvements on existing local streets within the City of Tupelo as directed by the Tupelo Public Works Department. This work shall include cold milling, asphalt paving, temporary striping and shoulder work as necessary to provide a finished project in compliance with the technical specifications and the directives provided by the Owner for each individual work order.

All proposed improvements shall be located within the existing rights-of-way (ROW) for local streets in the City of Tupelo. Improvements shall be in accordance with the directives, specifications and applicable local, state and federal guidelines associated with providing/installing the roadway improvements. Any work, storage, parking, mobilization, etc. conducted on private property shall be coordinated expressly by the Contractor and approved by the property owner separate of this Contract. The City of Tupelo does not and shall not direct, authorize, approve, etc. work or other supporting activities to be conducted/completed on any property not owned by the City of Tupelo.

Work on the project shall consist of the following items included on the bid form and per the directives included herein, technical specifications and manufacturer's material recommendations:

PROJECT PAY ITEMS:

1. **COLD MILLING:** The Contractor shall provide the labor, equipment, etc. required to cold mill existing asphalt streets and intersections as required to the completed the work as defined on the attached Primary Street List. Milling shall be completed in coordination with the asphalt overlay improvements included as part of this Contract.

The Average depth for milling shall be two (2) inches but may vary based on the requirements for each street, or portion thereof, as defined in the field by the Owner and/or Engineer. Excess materials shall be removed from the project site by the Contractor at no additional cost to the Owner. The first 250 +/- tons of mill material shall be provided to the City of Tupelo for future utilization. This material shall be hauled by the Contractor and stockpiled to the existing City materials yard on Commerce Street or as directed by the Owner. All other excess materials shall be removed and disposed of by the Contractor. No separate pay will be provided for hauling, stockpiling or disposing of milled material. If required, saw cutting shall be an absorbed item.

2. **BASE REPAIR COLD MILLING (Short Run Work):** The Contractor shall provide the labor, equipment, etc. required to cold mill existing asphalt streets and/or as required to mill existing dig out patch areas filled with granular material as necessary to complete base repairs and install Asphalt Base Course, 19mm mix prior to the final surface course overlay. This pay item shall only be used in association with Short Run paving & patch work as defined in this Section for point repairs / patch work. Normal milling along curbs, gutters, transition areas, and full width street milling shall all be measured and paid under the Cold Milling item on the Bid Form (Item No. 1) as required to complete the work as defined on the attached Primary Project List. Base Repair Cold Milling shall be completed in coordination with asphalt base course installation in areas defined by the Owner prior to the final overlay of each street. The Average depth for milling shall be three (3) inches. Excess materials shall be removed from the project site by the Contractor at no additional cost to the Owner.

3. **ASPHALT SURFACE COURSE, 9.5 MM MIX:** The Contractor shall provide the materials, labor and equipment to pave existing local roadways as directed by the Tupelo Public Works Department. The asphalt utilized for this project shall be a surface course mix provided and installed by the Contractor in accordance with the MDOT specifications. The surface course material provided by the Contractor and placed in the field may be 9.5 mm mix, SC-1 mix design or a similar equivalent mix design approved in writing by the City Engineer, Mr. Dennis Bonds, PE. The mix design shall be submitted by the Contractor and approved by the City Engineer prior to beginning any work on the project for the specific roadway improvements. The minimum course thickness shall be 1.5" and the maximum thickness shall be 2.5". The proposed thickness for all asphalt overlays for this Project shall be 2.0 inches minimum, unless otherwise directed by the Engineer for particular streets or portions thereof. The proposed asphalt surface course shall be installed within the limits of the existing roadways unless otherwise directed by the Owner.

4. **ASPHALT BASE COURSE, 19 MM MIX (SHORT RUN PATCH REPAIRS):** The Contractor shall provide the materials, labor and equipment to provide point repairs / base repairs (short run repairs) on existing local roadways as directed by the Tupelo Public Works Department. The asphalt utilized for this pay item shall be a base course mix provided and installed by the Contractor in accordance with the MDOT specifications. The base course material provided by the Contractor and placed in the field may be 19 mm mix, BB-

- 1 mix design or a similar equivalent mix design approved by the City Engineer, Mr. Dennis Bonds, PE. The mix design shall be submitted by the Contractor and approved by the Owner prior to beginning any work on the project for the specific roadway improvements. The minimum course thickness shall be 2.0" and the maximum thickness shall be 3.0". Asphalt base course installed under this item shall be as required to repair patches, dig-outs, utility cuts, single lane problems areas, etc. as associated with short-tun work in order to complete base repairs on existing roadways prior to the overlay with the final surface course.
5. GRANULAR MATERIAL FOR SHOULDER WORK: If required to meet the specification requirements along roadways with existing granular material shoulders, the Contractor shall install a clay/gravel mix, or soil/gravel mix with similar gradation and material type along existing roadway shoulders at the new edge of pavement following the asphalt overlay. The material, gradation, etc. shall be approved by the Owner prior to delivery to the site and placement in the field. Such work shall only be completed as necessary to promote safety for finished improved streets and shall not be required along most of the proposed roadways included on the Primary Street List. The Contractor shall be paid per cubic yard of material provided and placed in the field per the respective specifications. No other payment shall be made for providing and placing granular shoulder material.
 6. 4" TEMPORARY TRAFFIC STRIPE, CONT. WHITE: If directed by the Public Works Department (Jason Rush, Street Dept.), the Contractor shall install temporary striping on local roadways following the completion of the asphalt overlay. All streets included on the primary and/or secondary street lists will not require temporary striping. The contractor shall work with the Public Works Department to determine which streets shall require temporary striping and to determine the requirements for any such striping. The striping shall be installed in solid patterns OR skip patterns as defined by the Owner. The contractor shall be paid per LF of temporary stripe installed, regardless of the pattern utilized.
 7. 4" TEMPORARY TRAFFIC STRIPE, CONT. YELLOW: If directed by the Public Works Department (Jason Rush, Street Dept.), the Contractor shall install temporary striping on local roadways following the completion of the asphalt overlay. All streets included on the primary and/or secondary street lists will not require temporary striping. The contractor shall work with the Public Works Department to determine which streets shall require temporary striping and to determine the requirements for any such striping. The striping shall be installed in solid patterns OR skip patterns as defined by the Owner. The contractor shall be paid per LF of temporary stripe installed, regardless of the pattern utilized.

The Contractor shall be required to provide these items for various types of applications to assist the Tupelo Public Works Department in the overall roadway maintenance program efforts. The work shall generally include the following:

FINAL ROADWAY MILL & OVERLAY WORK: This shall constitute the majority of the work to be performed under this Contract. Cold milling and asphalt surface course (9.5 mm mix) work shall be completed on all of the existing streets identified on the Primary Project List included at the end of this section. Cold Milling for this work shall be measured and paid for with Item No. 1 on the Bid Form and overlay work shall include asphalt surface course per Item No. 3 on the Bid Form.

BASE REPAIR MILL & PATCH WORK (SHORT RUN WORK): The Contractor shall provide work on short run areas for small sections of existing streets. This work shall include milling and overlay work related to single lanes, dig out areas, patch work, pipe-culvert/utility pipe crossings, etc. The contractor will mill out existing asphalt or granular material from the defined base repair areas and shall replace the milled out material with asphalt base course. This work shall be identified and directed by the Tupelo Public Works Department in the field and shall only be performed by the Contractor upon the direction and approval of the Engineer and/or Street Maintenance Director. Areas shall be clearly marked and defined in the field by the Engineer prior to the commencement of milling and/or overlay activities by the Contractor. Cold Milling for short run patch work shall be measured and paid for with Item No. 2 on the Bid Form and base repair work shall include asphalt base course per Item No. 4 on the Bid Form.

The Contractor shall erect and maintain construction signing and barricades along existing City streets as necessary to protect labor, equipment, pedestrians, vehicular traffic etc. Traffic cones, etc. and other safety related devices, equipment, systems, etc. shall be the responsibility of the Contractor. The City and/or Engineer shall not be responsible for advising of said traffic control and/or safety related measures, etc. nor held liable for any issues resulting from same.

The Contractor shall install Temporary Striping as directed by the Owner. Many of the local streets on the street lists shall not require temporary striping following asphalt overlay improvements. Temporary striping shall only be installed on streets with 3 traffic lanes or more or as directed by the Public Works Department and/or Engineer. If required, temporary striping shall be installed by the Contractor within 2 days of the completion of asphalt overlay work for each individual street.

If required, the Contractor shall be responsible for coordinating the location of existing underground utilities via the 811 locate system should any excavation be required as part of the project preparation. Should utilities require relocation, the Contractor shall notify the City and the City shall be responsible for the relocation of existing utilities prior to the commencement of work by the Contractor. Should the Contractor damage existing utilities or other existing improvements, the Contractor shall repair/replace the damaged utilities, existing improvements, etc. at no additional cost to the City.

The Contractor shall complete work as directed and approved by the City of Tupelo Public Works Department. Work shall be confined to project areas located on rights-of-way owned and maintained by the City of Tupelo. Should the Contractor find it necessary to utilize private property for staging, storage, improvements, etc., the Contractor shall be solely responsible for soliciting and procuring the necessary permission/access from the private property owner

prior to commencing any work on said private property. No work shall be completed on MDOT rights-of-way without the approval of the necessary permits from the Mississippi Department of Transportation (MDOT). Should MDOT permits be required to facilitate individual work orders, the City shall be responsible for providing such approved permits.

The Public Works Department will provide a final Primary Street List to the Contractor that will define the roadways that are to be milled and overlaid during the Primary Period of Work. The Contractor shall be required to schedule and attend a Pre-Construction Conference together with the Public Works Department prior to the issuance of the Notice to Proceed. The primary objectives of the conference will be to review the Primary Street List and to discuss the following items: Notice to Proceed, Traffic Control, Safety, Review/Approve Asphalt Mix Design, Liquidated Damages, Secondary Work, etc. Following the Pre-Construction Conference, the Contractor will be afforded the opportunity to coordinate with the Public Works Department representative to inspect each street prior to the issuance of the Notice to Proceed. The City of Tupelo will issue the Notice to Proceed with an effective date no later than June 1, 2022, unless otherwise requested by the Contractor and approved by the Owner.

Upon issuance of the Notice to Proceed by the Owner, the Contractor will initiate the work as defined in the Contract Documents and/or as specified in the Notice to Proceed. Unless a time interval for the Contractor to pull off of the Project is approved by the Owner, the Contractor shall provide a minimum of one crew (milling and/or paving) to be actively working on the Project (including streets on the Primary and/or Secondary Street List provided by the Owner) on a daily basis. If the Contractor has other contracts for similar work with the Owner, each contract and respective requirements for milling/paving crews shall be independent of one another. A separate crew working on another contract shall not constitute the fulfillment of the performance requirements as defined herein.

The Contractor shall provide traffic control measures as required prior to completing work on any street each day. The Contractor shall work daily to complete milling and overlay work so that the work is consecutive from beginning of each street to the end of each street unless weather does not allow. If interrupted by inclement weather, the Contractor shall be required to resume work as soon as site conditions allow. If the Contractor has questions about the site conditions being acceptable for work, the Contractor shall coordinate with the Engineer in this regard for final resolution. If required and approved by the Owner in writing, the Contractor shall be allowed to move off the project temporarily after the completion of an individual street. The suspension of work/construction activities shall not be allowed while milling and/or overlay work for an individual street has been started and remains incomplete. No delays in the work shall be allowed while in the middle of an individual street unless site conditions prevent work from being completed or within the following limits: overlays shall be initiated within 10 days of the completion of cold milling on each street; temporary striping, if required by the Owner, shall be installed within 2 days of the completion of overlay activities.

Should the Contractor complete the milling and overlay work for the streets defined on the Primary Street List and still has time remaining in the contract, the Owner may supplement the Project List

with additional streets to be improved as part of this Project. Priority of any supplemental street improvements shall be as defined by the Owner.

The Primary Street List included at the end of this Section indicates the specific milling and overlay improvements to be completed as part of this project. The Contractor shall be given reasonable time to coordinate and begin the work in accordance with the Notice to Proceed. Once the construction activities are commenced by the Contractor, the work shall be completed in full during the defined Contract Period and be in accordance with the Performance Requirements defined in the Contract Documents. The bidder/Contractor agrees to pay Liquidated Damages in the amount of \$300.00 per day for failure to meet the required Performance Requirements and/or should the roadways defined on the Primary Street List not be completed by the end of the Contract Time as defined in the executed Contract. The Performance Requirements and related Liquidated Damages are defined in Paragraph 24 - 25 of Section B – Information for Bidders included in the Contract Documents.

Based on need and project funding, the Tupelo Public Works Department may issue a Secondary Street List to define additional roadways that are to be milled and overlaid as part of this Contract. Work on the Secondary Street List will not commence until after the Primary Street List has been completed by the Contractor. The Public Works Department will coordinate with the Contractor to define the roadways to be milled and/or overlaid as part of the Secondary Project List. The City reserves the right to add projects to the Secondary Project List at any time following the Primary Work Period so long as there is adequate time for the work to be completed during the Contract Period as defined in the Contract. The Public Works Department may prioritize the order of work for streets included on the Secondary Project List.

PROJECT COORDINATION BETWEEN CONTRACTOR & OWNER / ENGINEER shall be necessary for all facets of the proposed project whether discussed within Section C or not. Some additional items for consideration by the Contractor with respect to additional coordination with the Owner and Engineer during the Project that will be necessary to facilitate the work based on conditions that are necessary for the City of Tupelo and required by the Contractor for this Project. Additional items that will require specific coordination during the Project include:

The City of Tupelo will communicate with local Railroad (RR) Companies (i.e. KCS, BNSF) with respect to coordination of project activities and RR inspections / personnel. The Contractor will not be required to provide RR personnel for activities completed adjacent to local RR mainlines. However, it is the responsibility of the Contractor to coordinate with the Owner and Engineer in advance of completing any work within 100 LF of an existing RR in order to allow the Owner the opportunity to adequately coordinate with the appropriate RR company. Any fees associated with the RR inspections, etc. shall be paid for by the OWNER and shall not be the responsibility of the Contractor.

The City of Tupelo has other on-going contracts for street/roadway maintenance and related drainage improvements, etc. In some cases, the Contractor shall be required to coordinate with the Owner and Engineer to schedule work so that overall street maintenance objectives may be achieved for local streets. Such coordination may include dig outs, short-run patching/paving,

drainage pipe/inlets, curb & gutter and other related work that the City may require under other project or term contracts.

ASPHALT LOAD TICKETS shall be provided by the Contractor to the Owner on a daily basis. The Contractor shall note on each load ticket in the field the actual street name that the Contractor is working on when the ticket is delivered/accepted from the truck driver. Load tickets shall be divided by individual street and provided to the Owner separated by street name. If additional work is required for a street beyond one day, then the Contractor may retain copies of tickets until such time as the particular street is completed and, then, shall provide the tickets separated by street within 24 hours after completion of the street. The Engineer may request copies of load tickets at the end of each day, even if it is prior to the completion of an individual street, if preferred.

The Contractor shall not submit for payment for streets and corresponding asphalt tonnages unless the tickets have been separated and submitted to the Owner for that individual street.

The Contractor shall utilize the formats provided for submitting pay estimates / applications as represented by the forms included in Section H – Standard Pay Estimate Sheets. Additional information may be provided by the Contractor, if necessary, or as requested by the Owner or Engineer. But no pay estimate / application will be considered for payment unless the standard pay estimate sheets are included as part of the pay request package.

(The Primary Street List is included on Sheets C-8 thru C-10)

ADDENDUM #1

**City of Tupelo, Mississippi
 Local Street Maintenance
 Mill & Overlay Program - 2022 Annual Bid
 Bid No. 2022-013PW**

April 12, 2022

The Contract Documents, Plans and Specifications shall be amended/clarified as set forth herein below:

1. Remove the second sentence of the third paragraph of *Section A – Advertisement* and replace with the following: “A Pre-Bid Conference will be held at **1:00 pm local time on Thursday, April 14, 2022** at the Tupelo Public Works Department located at 604 Crossover Road in Tupelo, Mississippi.”
2. Remove the first sentence of paragraph 1. A. of *Section B – Information to Bidders* and replace with the following: “A Pre-Bid Conferenced will be held at **1:00 pm local time on Thursday, April 14, 2022** at the Tupelo Public Works Department located at 604 Crossover Road in Tupelo, Mississippi.”
3. Remove sheets C-1 thru C-7 of *Section C – General Conditions of Work* and replace with the attached sheets C-1 thru C-7 dated April 12, 2022 (*Addendum No. 1*) that includes additional descriptions for short run patch work and corresponding pay items.
4. Remove the *Bid Form (Sheet D-4)* from Section D – Proposal and replace with the attached Bid Form (Sheet D-4) that includes new pay items associated with short run patch work.

Bidders shall acknowledge receipt of this addendum on Page D-1 of the Proposal Form.

 (s/b) Dustin D. Dabbs
 Dustin D. Dabbs, P.E.
 Project Manager



AGENDA REQUEST

TO: Mayor and City Council

FROM: Alex Farned

DATE April 27, 2022

SUBJECT: IN THE MATTER OF APPROVAL OF CONTRACT FOR THE AQUATIC CENTER FOR MEMBERSHIP MANAGEMENT SOFTWARE AF

Request:

I would like to recommend that the City Council and Mayor approve the contract for Club Automation for the Tupelo Aquatic Center membership management software.

Note: The contract is attached to this request.

CUSTOMER		COMPANY	
Legal Customer Name:	The City of Tupelo, Mississippi d/b/a Tupelo Aquatics Center	Club Automation	
Contact Name:	Amy Kennedy	Attn: Legal Department	
Contact Title:	Director	2275 Half Day Road, #182	
Street Address:	PO Box 3608, Tupelo, Mississippi, 38803	Bannockburn, IL 60015	
		Account ID: 1203382	

This order form (the "Order Form") is entered into and effective as of the date of the last signature (the "Effective Date") by the authorized representatives of each of the parties by and between Daxko, LLC d/b/a Club Automation ("Club Automation" or "Company") and the above-named organization (the "Customer") and hereby expressly incorporates by reference the Club Automation Master Service Agreement available at <https://www.clubautomation.com/master-service-agreement> ("Service Agreement"), and subject to Customer's contract addendum, as amended, attached at Exhibit C, together with all additional terms and conditions for the services selected below, which are incorporated by reference as if included herein (collectively, the "Agreement"). Customer acknowledges that it has reviewed the terms of the Service Agreement and acknowledges that it is an integral part of the Agreement. Defined terms in this Order Form and in the Service Agreement shall have the same meaning in both documents. In consideration of the mutual promises made and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Company and Customer agree as follows:

- License(s) to Customer.** Subject to the terms, conditions, and restrictions set forth in this Agreement, and in consideration of the performance by Customer of the obligations and conditions of the Agreement, Company hereby grants to Customer for the Term of this Agreement a non-exclusive, non-transferable, revocable, limited license to use the Services listed in this Order Form. Such licenses are all specific to the authorized users of Customer to access and use, for Customer's internal business purposes.
- Description of Services.** The following, selected Services are licensed pursuant to the terms and conditions of the Agreement (the "Services"):

Services	
X	Club Automation Software
X	SMS Text Messaging
X	CA Mobile

- Term.** The initial term of all selected services will commence on the Launch Date and shall continue 72 months from the Launch Date of the first selected service unless terminated as provided herein (the "Initial Term"). After the expiration of the Initial Term and each renewal term thereafter, this Agreement will be automatically renewed at the then-current standard Company pricing for successive renewal terms, each with a duration equal to the duration of the Initial Term, unless either party gives written notice to the other party of its intent not to renew at least 60 days prior to the expiration of the then current term (the Initial Term and each renewal term are collectively the "Term").

In no event shall the Term of any selected service exceed the term of the underlying software. Customer agrees that as a condition of transitioning from one Company-affiliated software to another, Customer must, within six (6) months of the Effective Date of this Agreement, launch Gains Payment Processing on its current Company-affiliated software platform before beginning implementation under this Agreement. Customer acknowledges that the Gains Payment Processing pricing quoted under this Agreement shall only become effective upon the Launch Date of the Company-affiliated software.

- Launch Date.** Company will use commercially reasonable efforts to perform the system configuration services necessary for Customer to begin using one or more of the Services on a date ("Launch Date") mutually agreed upon by Customer and Company. Customer agrees to cooperate with Company and provide all required information and documentation on or before the Launch

Date. Unless otherwise agreed, Customer agrees to launch all of the selected Services within 12 months from the Effective Date. If Customer is currently using any of the listed products, then the Launch Date and the Effective Date for such services shall be identical unless otherwise set forth in the preceding paragraph.

If due to no substantial fault of Company, and unless otherwise specified, Customer does not timely launch each of the selected services then Customer's Launch Date for any remaining selected services will be deemed to be the date that is 12 months from the Effective Date, and all fees will be charged accordingly.

5. **Fees.**

a. Up Front Implementation Fees: For all selected Services, Customer will be charged one-time, non-refundable fees, due on the Effective Date, for system configuration services, data conversion, training services, and other professional services as set forth in Exhibit B, exclusive of travel time. All additional professional services will be billed at Company's then-current rates.

b. Fees: In exchange for the license to the selected Service(s), Customer agrees to pay the license fees set forth in Exhibit B. For the avoidance of doubt, any late fees incurred by Customer will not be used to offset any retroactive adjustment of invoiced amounts.

c. Transaction Fees: Customer will pay Company the following transaction fees listed in Exhibit B, if any.

d. Fee Increases. Unless otherwise indicated, the fees quoted for any products in this Order Form may be increased by Company, provided that the percentage increase in any twelve (12) month period shall not exceed the percentage increase in the Consumer Price Index plus three percent (3%) during the period between rate changes. The Consumer Price Index means the Consumer Price Index- All Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics at www.bls.gov for the immediately preceding calendar year. The foregoing limitation does not apply to: (a) transaction fees, training fees, installation fees, or any reimbursable expenses - all of which will be available at then-current rates or, (b) services no longer offered for license or sale, or (c) when any third-party provider increases the fees it charges to Company beyond the limitation provided herein, in which case Company reserves the right to pass such additional fees on to Customer.

e. Auto-Debit Authorization: Customer hereby authorizes Company to debit Customer's designated bank account to be identified to Company via separate documentation, which is due to Company at the time of the execution of this Order Form for the full amount of all fees, expenses and reimbursements then due under this Agreement. Customer's failure to maintain sufficient funds in its designated bank account to cover all invoiced fees and costs shall constitute a default for the failure to pay all such amounts. Within thirty (30) days after execution of this Agreement, if paying by debit, Customer shall complete and submit to Company an auto debit authorization form together with a voided check from Customer's designated bank account, with the necessary information for Company to debit, when they become due, the full amount of all fees, expense and reimbursements under this Agreement. Customer shall provide an updated authorization form to Company promptly upon any relevant changes to the information set forth therein. Customer is responsible for reimbursing Company for any fees or penalties incurred by Company in connection with debiting from the account designated by Customer. Company does not accept payment by check.

6. **Prior Agreements.** If Customer has entered into any previous agreements with Company for the selected products and services ("Prior Contracts"), this Agreement entirely replaces and supersedes all conflicting provisions of such Prior Contracts.

7. **SMS Services**

a. SMS Services. This Order Form expressly incorporates by reference the Terms of Use available at <https://www.daxko.com/text-messaging-terms-of-use> ("Text Messaging Service Agreement").

b. Description of Services: Daxko will provide English language, outbound text messaging services to Customer's members and at Customer's direction and direction through Customer's account (the "Services"). Customer acknowledges that the Services are provided solely under Customer's direction

and control. Customer is solely responsible for properly documenting all consumer opt-out requests and shall indemnify and hold Company harmless against any claims brought by a Consumer regarding failure to process any such requests to suspend text messaging to a consumer phone number.

c. Pricing. Daxko shall charge Customer a monthly service fee following the Launch Date in accordance with Exhibit B.

8. Mobile - Branded

a. Development. Company has developed a mobile device application that allows mobile phone or similar internet capable handheld device users (specifically users of devices operating on the iPhone or Droid platforms) to view Customer programs and events online through a Customer-branded application (such software, together with all associated iterations thereof, code, components, media, printed materials, and online or electronic documentation collectively referred to as the "Software") using a website template that allows Customer to control access to Software and perform various other functions (the "Admin Website," as further defined hereafter). Customer has requested that Company develop and make the Software and Admin Website available to Customer via the Apple platform. Customer acknowledges that such service is contingent upon Customer opening and maintenance of an Apple Developer Account. Customer acknowledges that it is solely responsible direct payment to Apple for any and all annual or monthly fees associated with opening and maintaining an Apple Developer Account. Company shall make available for download the Software to License and Customer's branch members (each a "Member"). Company shall make and attempt to make the Software available at iPhone and Droid mobile phone application stores so that Customer's Members may download it from such vendors; provided, however, downloading the Software from such store shall be subject to any terms, conditions, and restrictions imposed by such vendor. Company shall not be liable for any election by any vendor not to offer or carry the Software or for any failure by any vendor, temporary or permanent, to offer the Software for sale or other acquisition to Customer or to Customer's Members.

b. Pricing. Company shall charge Customer a monthly service fee following the Launch Date as provided in Exhibit B. Company may restrict Customer's access to the Admin Website or terminate this Agreement by providing notice to Customer if any undisputed amounts required to be paid hereunder are not paid by the date which is thirty (30) days past the due date thereof. Customer shall be directly responsible for paying to Apple during the Term of this Agreement any Apple Developer Account fees.

c. Launch Date. The term of this Agreement shall begin on the Effective Date, provided however, that Company will not begin billing for the Services discussed in this section until the date the Software is approved by Apple or Google as "Ready for Sale" in the Apple or Google app store ("Launch Date").

THE PARTIES ACKNOWLEDGE THAT THEY HAVE REVIEWED THIS ORDER FORM, THE CLUB AUTOMATION MASTER SERVICE AGREEMENT AND ALL OTHER TERMS EXPRESSLY REFERENCED HEREIN AND WHICH ARE EXPRESSLY INCORPORATED BY REFERENCE, WHICH THE PARTIES AGREE ARE ESSENTIAL TO THE PARTIES' AGREEMENT. To the extent that there are conflicts between the Order Form, the Service Agreement, and/or any associated terms or agreements, this Order Form shall control. By signing below, customer represents and warrants that it has the requisite power and authority to execute, deliver, and perform its obligations under this agreement. Customer has been duly authorized by all necessary corporate or organizational action by customer to execute this agreement. The parties express their acceptance of all of the terms and conditions of this agreement. This Agreement may be executed in multiple counterparts, with .pdf or electronic signatures, and each party waives any rights or requirements under any law or regulation that requires an original, non-electronic signature or the delivery or maintenance of a non-electronic record.

CUSTOMER	COMPANY
Signature:	Signature:
- 312 -	

Name:	Name:
Title:	Title:
Date:	Date:

Exhibit A
Licensed Locations/Branches Under This Agreement

Location Name	Street	City	State	Zip Code
Tupelo Aquatics Center	692 N Veterans Memorial Blvd	Tupelo	MS	38804

Exhibit B -- Pricing

Monthly Software License Fee

Service Year	Monthly Managed Service Fee
Service Year 1	\$699.00

Training / Implementation / Professional Services

Billing Element	Fee
Training and Implementation	\$0.00

Branded Mobile App Fees

Name	Rate	Billing Element
Monthly License Fee	\$199.00	Per Location

SMS Fees

Name	Rate	Billing Element
Monthly SMS Text Messaging (Includes 5,000 SMS messages)	\$63.00	Per Location
Excess Text Message Fee	\$.01	Per Processed SMS message over the monthly maximum per location

Exhibit C - Mandatory
 Addendum to All City of
 Tupelo Contracts June 2015
 (as amended)

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

1. TUPELO does not 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).
2. 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.
3. TUPELO does not waive its Constitutional Eleventh (11th) Amendment immunity.
 U.S. Const. Amend. XI.
4. 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)
5. TUPELO does not agree to situs of jurisdiction or venue of suits being other than Lee County, Mississippi or the Northern District of Mississippi, United States District Court.
 Miss. Code Anno. 11-45-25.
6. 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).

7. TUPELO does not agree that a party may represent, prosecute or defend legal actions in the name of TUPELO.
Miss. Code Anno. 11-45-25.
8. 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).
9. TUPELO does not agree to submit to binding arbitration.
Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18,2002).
10. TUPELO will make payments for all amounts owed under a contract agreement in accordance with state law.
Miss. Code Ann. § 31-7-305.
11. 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 Anno. § 25-61-9 (7).
12. 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 Anno. § 25-61-9 (1).
13. 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.

Miss. Code Anno. § 25-61-9 (6).

14. In compliance with the Mississippi Accountability and Transparency Act of 2008, all payments made by TUPELO will be posted on a public website. The information posted will include: the date of payment, vendor name, vendor's city and state and the payment amount. The release of any such information supersedes any applicable non-disclosure or confidentiality obligations of TUPELO.

Miss. Code Ann. §§ 27-104-151 to 159.

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

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

16. 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)).

17. 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

18. 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



AGENDA REQUEST

TO: Mayor and City Council
FROM: Johnny Timmons, Manager TW&L
DATE: April 27, 2022
SUBJECT: IN THE MATTER OF REJECTION OF BID # 2022-016WL AND
BID # 2022-017WL **JT**

Request:

I recommend the following bids be rejected at your regular meeting on Tuesday, May 3, 2022:

Bid No. 2022-016WL – 55’ Compensated Overcenter Material Handling Aerial Device

Bid No. 2022-017WL – 2022/2023 Directional Drilling Unit, Mud System and Trailer

This rejection is necessary since no bids were received during the reverse auction held on April 21, 2022.