

PURCHASE AGREEMENT
City of Tupelo – Bancorp South Arena & Conference Center Wi-Fi Project

This agreement is made and entered into by and between Synergetics Diversified Computer Services, Inc. of P. O. Box 80264, Starkville, Mississippi 39759, hereinafter referred to as "Synergetics", and City of Tupelo, 71 East Troy Street, Tupelo, MS 38804.

WHEREAS, Synergetics has reviewed the Client's Eligible Equipment and/or Services needs contained within the provided and is desirous of providing the Client with the needed Equipment and/or Services;

WHEREAS, the Client has reviewed Synergetics' capabilities and is desirous of Synergetics providing the needed Eligible Equipment and/or Services;

NOW, THEREFORE, in consideration of the promises and of the mutual covenants, conditions and agreements herein contained, the parties hereto, each intending to be legally bound, agree that the above recitals are incorporated into this Agreement and also agree as follows:

1.0 Description of Services. Beginning on the date of execution of this Agreement, Synergetics will provide the services (collectively, the "Services"), as described in Exhibit A of this document.

2.0 Synergetics Pricing Schedule. For services rendered, Synergetics will submit an invoice to the Client according to the terms defined in Exhibit A of this document.

3.0 Expense Reimbursement. Unless expressly stated otherwise, Synergetics shall bear all "out of pocket" expenses related to travel and lodging. Expenses incurred for hardware, software, etc. as required by the task being performed, shall be borne by the Client. Client shall be provided estimation of these expenses, and Client will provide permission for these expenses and agreement to pay for these expenses, prior to the expense actually being incurred.

4.0 Ownership. Subject to the provisions of Section 13.9, the Client shall be the sole owner of any and all installed software and hardware, network configurations, network wiring and cabling, and other equipment physically installed in conjunction with this project. Synergetics shall make no claim to the aforementioned property; however, the following provisions apply with respect to copyrightable works, ideas, discoveries, inventions, applications for patents, patents, studies, reports, and research (collectively, Intellectual Property):

4.1 *Synergetics' Intellectual Property.* Synergetics holds an interest in the Intellectual Property activities that result from this Agreement.

4.2 *Development of Intellectual Property.* Any improvements to Intellectual Property items, further inventions or improvements, and any new items of Intellectual Property discovered or developed by Synergetics (or Synergetics' employees, if any) during the term of this Agreement shall be the property of Synergetics.

5.0 Liability. Synergetics will under no circumstances be liable to the Client or any other third party for indirect, special, incidental or consequential damages, losses or expenses, including but not limited to loss of profits, loss of business opportunities, loss of goodwill, loss of records or data, or loss of equipment use, even if Synergetics is advised of such damages, losses or expenses.

6.0 Indemnification. Client agrees to indemnify and hold Synergetics harmless from any claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against Synergetics and / or its employees that result from acts or omissions of Synergetics'

and / or its employees, if any, and Synergetics' agents for any issues neither directly nor indirectly caused by Synergetics.

7.0 Term and Termination

7.1 Term. This Agreement, being entered into as of the aforementioned date, shall have service start date of February 1, 2021 and shall remain in term until January 31, 2022, at which time it may be renewed by mutual consent of the contracting parties for up to 4 additional terms of 1 year each.

7.2 Termination. Subject to the provisions of Section 13.9, either party may terminate this Agreement at will by giving 30 days written notification to the appropriate agent listed hereunder:

If to Synergetics:

Synergetics Diversified Computer Services, Inc.
P. O. Box 80264
Starkville, MS 39759
Attn: David Palmer
CEO

If to the Client:

City of Tupelo
71 East Troy Street
Tupelo, MS 38804
Attn: Jason Shelton
Mayor

and by fulfilling their respective obligations upon termination as outlined in 7.3.

7.3 Obligations Upon Termination. Upon the effective date of termination of this Agreement by either party for any reason the following provisions apply:

- (i) All sums owed by the Client to Synergetics will be immediately due and payable;
- (ii) The Client will return to Synergetics any and all property belonging to Synergetics; and
- (iii) Synergetics will return to the Client any and all property belonging to the Client.

8.0 Confidentiality. Each party acknowledges that it may from time to time receive Confidential Information from the other party. Each party agrees not to disclose such Confidential Information of the other party, except as expressly permitted herein. Each party shall prevent any unauthorized person from having access to the other party's Confidential Information, shall return any such Confidential Information to the other party at any time upon request and shall return or destroy all copies of such Confidential Information immediately after termination of this Agreement. A violation of this paragraph shall be a material violation of this Agreement.

9.0 Unauthorized Disclosure of Information. If it appears that either party has disclosed (or threatened to disclose) information in violation of this Agreement, the harmed party shall be

entitled to an injunction to restrain the violating party from disclosing, in whole or in part, such information, or from providing any services to any party to whom such information has been disclosed or may be disclosed. The harmed party shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

10.0 Confidentiality After Termination. The confidentiality provision of this Agreement shall remain in full force and effect after the termination of this Agreement.

11.0 Hiring of Synergetics' Employees. Prior to the target date of the completion of this Agreement and for a period of two years after the termination of this Agreement, Client will not hire or offer to hire, either directly or indirectly, any employee of Synergetics without Synergetics' written consent. Likewise, Synergetics will not hire or offer to hire, either directly or indirectly, any employee of Client without Client's written consent.

12.0 Billing and Collections. Client agrees to abide by Synergetics' Billing and Collections Policy as shown below:

12.1 Synergetics will promptly render invoices to Client.

12.2 Client agrees to render payment for invoices promptly.

12.3 Any outstanding balance that remains unpaid beyond thirty (30) calendar days of Invoice rendering is considered past due.

12.4 The client is expected to pay interest expense on the outstanding balance. A 1.5% per month interest expense accrues from the date of the invoice(s). This interest expense will not be charged if the invoice is paid within thirty (30) days. Outstanding balances older than thirty (30) days will have the interest expense added to the amount outstanding.

12.5 If a balance remains unpaid for a period of ninety (90) calendar days, Synergetics may assign this overdue balance to a third party for the purpose of collecting the overdue balance.

13.0 Miscellaneous.

13.1 Notices. Notices required during the term of this Agreement if given by regular mail or electronic means generating a hard copy printout shall be deemed to have been given or made when delivered personally or placed, properly addressed and postage prepaid, in the mail of any jurisdiction or communicated by telefax or similar electronic means. All notices will be given by one party to the other at the addresses indicated in 7.3, unless change thereof previously has been given in writing to the party giving notice.

13.2 Amendment. This Agreement may be modified only by a written amendment executed by duly authorized officers or representatives of both parties.

13.3 Severability. If any one or more provisions of this Agreement is declared invalid or unenforceable, the same shall not affect the validity or enforceability of any other provision of this Agreement if the essence of the parties' agreement is retained, and such invalid or unenforceable provision shall be limited or curtailed only to the extent necessary to make such provision valid and enforceable.

13.4 Waiver. Any failure of either party to enforce any of the provisions of this Agreement will not be construed as a waiver of such provisions or the right of the party thereafter to enforce each and every such provision.

13.5 No Third Party Beneficiaries. The parties specifically intend and agree that no one other than the parties to this Agreement shall be deemed to be a third party beneficiary of any of the rights or obligations set forth in this Agreement.

13.6 Exhibits and Schedules. All exhibits and schedules to this Agreement, if any, are hereby incorporated by reference into, or made a part of, this Agreement.

13.7 Entire Agreement. All prior proposals, understandings, and other agreements, whether oral or written, between the parties that relate to this subject matter are hereby superseded and merged into this Agreement. This agreement constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof. The express terms hereof control and supersede (i) all oral or written understandings of the subject matter hereof and (ii) any course of performance and/or usage of trade inconsistent with any of the terms hereof.

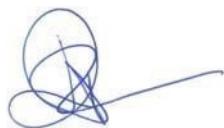
13.8 Applicable Law. The Agreement shall be governed by the laws of the State of Mississippi.

13.9 Funding Contingency. If this Agreement is to be funded using E-rate discounts, the entire Agreement is contingent upon the Client receiving the requested Erate funding provided by the Universal Service Fund, of which the fund administrator is the Schools and Libraries Division of the Universal Service Administrative Company. Both contractual parties will honor the decision of the Schools and Libraries Division and the appropriate action will be taken at the time of funding approval or denial. Notwithstanding the foregoing, it is agreed that once Client has taken possession of the goods or services supplied by Synergetics pursuant to the terms of this Agreement, Client shall be liable for the price for such goods or services regardless of whether the E-rate funding is approved or paid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized officers or representatives as of the date first written above. By signing below each of the duly authorized officers or representatives agree to all terms and conditions contained herein and certify that they have full legal authority to bind their respective organization these terms and conditions.

**Synergetics Diversified
Computer Services, Inc.**

Client



David A. Palmer
CEO

Jason Shelton
Mayor

1/22/2021

Date Signed

Date Signed

EXHIBIT A

Synergetics will provide the Client with the following Equipment and/or Services for the term of fifteen months as defined in the Agreement.

PURCHASE AGREEMENT

This Purchase Agreement provides for purchase of the following Equipment and/or Services as detailed in the below referenced quotes:

Bancorp South Arena & Conference Center Wi-Fi Project (Breakdown of Equipment is attached)	\$256,069.88
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Mandatory Addendum to
All City of Tupelo Contracts
August 2019

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 contact to which TUPELO is a party are hereby null, void and deleted. Not intended to be an exhaustive list, the following are examples of such matters and shall be exceptions to any contrary provision(s) in any contract to which TUPELO is a party.

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

9. TUPELO does not agree that a party may represent, prosecute or defend legal actions in the name of TUPELO. (CITATION NEEDED.)
10. Provisions that limit the time for TUPELO to pursue legal actions are deleted and void.

Miss. Const. Art. 4, § 104; Miss. Const. Art. 4, § 100; Miss Code Ann. § 15-1-5; Miss AG Op; Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
11. TUPELO does not agree to submit to binding arbitration.

Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
12. TUPELO will make payments for all amounts owed under a contract agreement in accordance with state law.

Miss. Code Ann. § 31-7-305.
13. TUPELO advises for all contracts entered into, the provisions of the contract which will contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information, and shall be available for examination, copying or reproduction.

Miss. Code § 25-61-9 (7).
14. TUPELO must comply with Mississippi public records law. Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential.

Miss. Code § 25-61-9 (1).
15. Data processing software obtained by TUPELO under a licensing agreement that prohibits its disclosure and which software is a trade secret as defined in Miss. Code Section 75-26-3, and data processing software produced by a public body which is sensitive must not be subject to inspection, copying or reproduction under Mississippi public records law. “Sensitive” means only those portions of data processing software, including the specifications and documentation, used to:
 - (a) Collect, process, store, and retrieve information which is exempt;
 - (b) Control and direct access authorizations and security measures for automated systems;
 - (c) Collect, process, store, and retrieve information disclosure of which would require a significant intrusion into the business of the public body.

16. 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