

CONTRACT

THIS AGREEMENT, made this the _____ day of _____, 2024, by and between **TUPELO, MISSISSIPPI** hereinafter called "OWNER" and Townes Construction Co. Inc 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 "**ROBINS FIELD DRAINAGE 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 **90** 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 Performance and Payment Bond
 - F. NSPE General Conditions
 - G. Special Contract Provisions
 - H. DRAWINGS prepared by **DABBS CORPORATION** and dated **APRIL 2024**.
 - I. SPECIFICATIONS issued by **DABBS CORPORATION** and dated **APRIL 2024**.
 - J. 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 the "Mandatory Addendum to All City of Tupelo Contracts" (3 pages) dated October 28, 2022. The attached addendum shall be signed by the Contractor and executed by the City.
 - 11. Attached hereto and made a part of this Contract is the "American Rescue Plan Act (ARPA) Mandatory Addendum" (9 pages) dated February 1, 2024. The attached addendum shall be signed by the Contractor and executed by the City.

12. 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)

13. 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: Armstead Townes III
NAME: Armstead Townes III
TITLE: Pres

ATTEST:

BY: Estelle Town
NAME: Estelle Town
TITLE: Admin Asst.

(SEAL)



Mandatory Addendum to
All City of Tupelo Contracts
October 28, 2022

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

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

9. TUPELO does not agree that a party may represent, prosecute or defend legal actions in the name of TUPELO.
10. TUPELO may not and does not agree to the payment of attorney fees of a “prevailing party” unless specifically authorized by statute. E.g. Miss. Code Anno. § 31-7-309 (1972 as amended) payment of interest on outstanding invoice. Miss AG Op., Nowak, 2009 WL 367665 (Miss.A.G.).
11. Provisions that limit the time for TUPELO to pursue legal actions are deleted and void.
Miss. Const. Art. 4, § 104; Miss. Const. Art. 4, § 100; Miss Code Ann. § 15-1-5; Miss AG Op; Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
12. TUPELO does not agree to submit to binding arbitration.
Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
13. TUPELO will make payments for all amounts owed under a contract agreement in accordance with state law.
Miss. Code Ann. § 31-7-305.
14. TUPELO advises for all contracts entered into, the provisions of the contract which will contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information, and shall be available for examination, copying or reproduction.
Miss. Code § 25-61-9 (7).
15. TUPELO must comply with Mississippi public records law. Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential.
Miss. Code § 25-61-9 (1).
16. Data processing software obtained by TUPELO under a licensing agreement that prohibits its disclosure and which software is a trade secret as defined in Miss. Code Section 75-26-3, and data processing software produced by a public body which is sensitive must not be subject to inspection, copying or reproduction under Mississippi public records law. “Sensitive” means only those portions of data processing software, including the specifications and documentation, used to:
(a) Collect, process, store, and retrieve information which is exempt; (b) Control

and direct access authorizations and security measures for automated systems; (c) Collect, process, store, and retrieve information disclosure of which would require a significant intrusion into the business of the public body.

17. TUPELO is prohibited from binding its successors in office to contracts, including leases, which result in taking away the successors' rights and powers conferred by law, unless there is specific statutory authority to enter into such contract. In the absence of specific statutory authority, such contracts are voidable by the successors in office.
MS AG Ops., Barton (January 8, 2014) and Barton (July 15, 2011)(both relying on Biloxi Firefighters Assoc. v. City of Biloxi, 810 So.2d 589 (Miss. 2002).

18. TUPELO does not have the power to grant to any person, firm or corporation any exclusive franchise or any exclusive right to use or occupy the streets, highways, bridges, or public places in such municipality for any purpose. TUPELO cannot grant, renew, or extend any such franchise, privilege or right, without compensation or for any longer period than twenty-five years.
Miss. Code Anno. 21-27-1

19. All contracts must be approved by the City Council of TUPELO, subject to the veto power of the Mayor of TUPELO.
MS AG Ops. 2012-00013

20. All payments shall be made by TUPELO within forty-five (45) days of invoice, unless disputed. In the case of a bona fide dispute, TUPELO shall pay only the amount of the invoice not disputed. Interest shall be paid at a rate of one and one-half percent (1- ½ %) per month or portion thereof on the unpaid balance from the expiration of such forty-five-day period until such time as the warrant or check is mailed or otherwise delivered to the vendor.
Miss. Code Anno. §31-7-305 (1972 as amended)

Acknowledged and agreed:

CITY
Date:


CONTRACTING PARTY
Date:

American Rescue Plan Act (ARPA) Mandatory Addendum

(Revised 2/1/2024)

Compliance with Federal Law, Regulations and Executive Orders

This is an acknowledgement that federal assistance from the US Department of Treasury under the American Rescue Plan Act (ARPA) will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, ARPA implementing regulations and any correlating regulations established by the Treasury Department, including but not limited to the following conditions:

Equal Opportunity Clause

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry

out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.”

Minority and Women Business Enterprises

This contract was procured by the OWNER taking affirmative steps to assure that women and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Contractor hereby agrees to comply with the following, or when otherwise applicable:

The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise).

Contractor hereby agrees to take affirmative steps to assure that women and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

- 1) Including qualified women's business enterprises and small and minority businesses on solicitation lists;
- 2) Assuring that women's enterprises and small and minority businesses are solicited whenever they are potential sources;
- 3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business, and women's business enterprises;
- 4) Where the requirement permits, establishing delivery schedules which will encourage participation by women's business enterprises and small and minority business;
- 5) Using the services and assistance of the Small Business Administration, and the U.S. Office of Minority Business Development Agency of the Department of Commerce; and for the purposes of these requirements, a Minority Business Enterprise (MBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by members of the following groups: Black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan Natives. A Women Business Enterprise (WBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by women.
- 6) If any subcontracts are to be let, requiring the prime Contractor to take the affirmative steps in a through e above.

Entities and contractors were previously required to provide proof of compliance to 2 CFR 200.321 by providing proof of submitting solicitation to the Mississippi Procurement

Technical Assistance Program (MPTAP) and proof of targeted solicitation to DBE firms/vendors. Guidance from MDEQ dated May 1, 2023 requires awardees to show proof of compliance *by one of the two methods*, or both should they choose to. An email detailing the project should be sent to Agency Bid Bank agencybidbank@mississippi.org You should receive a confirmation to retain in order to demonstrate proof of compliance.

Assurances of Compliance with Title VI of the Civil Rights Act of 1964

Contractor and any Subcontractor, or the successor, transferee, or assignee of Contractor or any Subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d *et seq.*), as implemented by the Department of the Treasury's Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Contract. Title VI also provides protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d *et seq.*, as implemented by Treasury's Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Contract.

Davis-Bacon Act

For construction projects over \$10 million (based on expected total cost):

All laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:

- The number of employees of contractors and sub-contractors working on the project;
- The number of employees on the project hired directly and hired through a third party;
- The wages and benefits of workers on the project by classification; and
- Whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

Other applicable language contained in 29 C.F.R. § 5.5(a) shall apply.

Copeland "Anti-Kickback" Act

Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts.

The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

Contract Work Hours and Safety Standards Act

Contracts that are in excess of \$100,000 and involve the employment of mechanics or laborers must include provisions requiring compliance with the Contract Work Hours and Safety Standards Act as follows:

1. Overtime requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such a workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such a workweek.
2. Violation: liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for unpaid wages and liquidated damages. The OWNER shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

The Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Government purposes," any subject data or copyright described below. "Government purposes" means use only for the direct purposes of the Government. Without the copyright owner's consent, the Government may not extend its federal license to any other party.

1. Any subject data developed under the Contract, whether or not a copyright has been obtained, and
2. Any rights of copyright purchased by Contractor using federal assistance funded in whole or in part by the Department of the Treasury.

Unless Treasury determines otherwise, a Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit Treasury to make available to the public either (1) Treasury's license in the copyright to any subject data developed in the course of the Contract or (2) a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work which is the subject of this Contract is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Government may direct.

Unless prohibited by Mississippi law, upon request by the Government, Contractor agrees to indemnify, save, and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. Contractor shall be required to indemnify the Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Contractor.

Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

Data developed by Contractor and financed entirely without using federal assistance provided by the Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work. Contractor agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

For the purposes of this Section, "subject data" means "recorded information, whether or not copyrighted, . . . that is delivered or specified to be delivered as required by the Contract."

Examples of "subject data" include, but are not limited to, "computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses or other similar information used for performance or administration of the Contract."

Clean Air Act and Federal Water Pollution Control Act

Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the OWNER and understands and agrees that the OWNER will, in turn, report each violation as required to assure notification to the Treasury Department and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with American Rescue Plan Act funding.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the OWNER and understands and agrees that the OWNER will, in turn, report each violation as required to assure notification to the Treasury Department and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with American Rescue Plan Act funds.

Debarment and Suspension

This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by OWNER. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to OWNER, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

Cities cannot award a contract to parties listed on the government-wide exclusions in the System for Award Management (SAM) listed at www.sam.gov.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence

an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

A Byrd Anti-Lobbying Certification is attached to these supplemental general conditions and execution is required for this contract.

Procurement of Recovered Materials

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: Competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Access to Records

The Contractor agrees to provide OWNER and the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

OWNER and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Comptroller General of the United States.

No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (Huawei and ZTE)

Contractor is prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by **Huawei Technologies Company or ZTE Corporation** (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Publications

Any publications produced with funds from this award must display the following language: “This project is being supported in whole or in part by the American Rescue Plan Act (ARPA), federal award number [enter project FAIN] awarded to The City of Tupelo, Mississippi by the U.S. Department of the Treasury.”

Increasing Seat Belt Use in the United States

Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for your employees when operating company-owned, rented or personally owned vehicles.

Reducing Text Messaging While Driving

Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving, and establish workplace safety policies to decrease accidents caused by distracted drivers.

Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

Remedies

Unless stated otherwise in this Contract, or in any of the Contract Documents, in the event Contractor defaults or fails to perform any requirement contained herein, Owner may pursue any remedy at law or equity to enforce the terms of this agreement, including, but not limited to, actual and punitive damages, liquidated damages, and/or specific performance. This provision shall not constitute a waiver of any other right possessed by the Owner.

Termination for Cause and Convenience

Unless stated otherwise in this Contract, or in any of the Contract Documents, the parties agree to the following:

Termination for Convenience. The Owner may terminate this Contract, in whole or in part, for any reason, upon five (5) days written notice to the Contractor. In such event, the Owner shall pay the Contractor its costs, including reasonable Contract close-out costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its final claim to the Owner to be paid by the Owner. If the Contractor has any property in its possession belonging to the Owner, the Contractor will account for the same, and dispose of it in a manner the Owner directs.

Termination for Breach. Either Party’s failure to perform any of its material obligations under this Contract, in whole or in part or in a timely or satisfactory manner, will be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, will also constitute a breach. In the event of a breach, the non-breaching Party may provide written notice of the breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within thirty (30) days after delivery of notice, the non-breaching Party may exercise any of its remedies provided under this Contract or at law, including immediate termination of the Contract.

[SIGNATURES ON FOLLOWING PAGE]

OWNER:

CITY OF TUPELO, MISSISSIPPI

By: _____

Name: _____

Title: _____

Date: _____

CONTRACTOR:

Townes Construction CO

By: Armstead Townes III

Name: Armstead Townes III

Title: Pres.

Date: _____

**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.

**BYRD ANTI-LOBBYING
AMENDMENT**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification (s) to the awarding agency.

**APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING
LOBBYING – REQUIRED FOR CONTRACTS OVER \$100,000**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for

making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor Townes Construction Co., Inc. certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Armstead Townes III
Signature of Contractor's Authorized Official

Armstead Townes III - President
Name and Title of Contractor's Authorized Official

Date

**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 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