



2025-2027 Annual Insp And PM/Repair Service Agreement

Tupelo water and light
Customer#
Email
Phone:
Fax

Special Pricing For Tupelo Water & Light

Dielectric Testing Bucket,Liner,Upper Control	\$225.00 per unit
Annual Inspection Aerial/digger Febuary	\$560.00 per unit
180 Day Inspection/PM Service	\$460.00 per unit
Rotation Bolt Inspection Per Ansi 92.2	\$250.00 per unit

Annual Inspection is per ANSI 92.2
Annual Inspection price will include Aerials and/or Digger derrick. Units.
Filter price is not included in above pricing.
All inspections the customer will recive a inspection for copy in truck also emailed copy
All inspections will be performed in the time frame listed above

Note:

Drive time will be waived for all inspections for units centrally located on Tupelo Water & Light yards. If travel is required to perform inspection outside the yard, drive time will be assessed.

All repairs will be scheduled with Tupelo water and lightto promote multiple unit repairs

*****Hourly Drive/Labor Rate \$165.00 per houre*****

The estimate if for stated services only. If during the process other items are found needing attention, the customer will be advised of costs " BEFORE ADDITIONAL WORK IS PERFORMED."

The above estimate does not include the 10% fuel surcharge.

Above estimated prices are good for thirty (30) days from the date of this estimate.

The term of this agreement is for 2 years form date signed

Payment Terms: Net 30 days

Todd seaborg
210.476.7776
251-423-4293

Customer acceptance

Date:_____

Todd.Seaborg@terex.com

Signature must also be included on Terms and condtions TAB

DIGGER DERRICK

90 DAYS (360 HOURS)

1. Check controls at platform and lower controls for proper operation.
2. Inspect fall protection equipment and attachments.
3. Inspect visual and audible devices.
4. Check condition, cleanliness, and dryness of fiberglass components.
5. Visually check for missing or loose covers and guards.
6. Check for missing and illegible operational, warning, or instructional markings.
7. Visually check oil level in hydraulic reservoir.
8. Visually inspect for leaks in hydraulic system.
9. Check all areas for evidence of physical damage.
10. Visually check all cylinders for leaks.
11. Visually inspect all fasteners for tightness.
12. Visual inspection of all structural members; Digger Derrick, accessories, outriggers, subframe, and attachments, for cracks and permanent deformation.
13. Check for rotational obstructions.
14. Visual inspection of all electrical wires.
15. Inspect winch line, hook, and slings.
16. Visually inspect Auger Roll Up Cable.
17. Inspect for damaged or missing auger teeth.
18. Inspect all extension wear pads, sheaves and pins
19. Visually inspect all sheaves and pins.
20. Lubricate all points per lubrication chart recommendations.

180 DAYS (720 HOURS) SAME AS 90 DAY BUT INCLUDE:

1. Return filter replacement (filter price not included)
2. Test all pressures
3. Load test to inspect for stability and boom drifts
4. Apply slip plate to outriggers

If approved rotation bolt inspection will be performed at this time (Needs to be inspected once a year, per Terex.)

ANNUAL INSPECTION 12 MONTHS (1,050 HOURS) SAME AS 90 & 180 DAY BUT INCLUDES

1. Inspect and lubricate PTO drive shaft to pump.
2. Take samples of hydraulic oil and test.
3. Check cylinder drift.
4. Perform visual inspection of all critical welds.
5. Check all hydraulic pressure adjustments for proper setting.

ELECTRICAL TESTS

Dielectric integrity of the booms must be tested after every year, or 1,050 hours of operation, whichever occurs first, or if the insulation value is in question.

TESTING FIBERGLASS THIRD

Aerials

90 DAYS (360 HOURS)

1. Check controls at platform and lower controls for proper operation.
2. Inspect fall protection equipment and attachments.
3. Inspect visual and audible devices.
4. Check cleanliness and dryness of fiberglass components.
5. Check for missing and illegible operational or instructional markings.
6. Visually check oil level in hydraulic reservoir.
7. Inspect for leaks in hydraulic system.
8. Visually check all cylinders for leaks.
9. Visually inspect leveling system. (Chains and Insulator Assemblies)
10. Visually inspect all fasteners for tightness.
11. Visual inspection of all structural members for cracks and permanent deformation.
12. Check for rotational obstructions.
13. Visual inspection of all electrical wires.
14. Operational test of all boom functions.
15. Check tension on leveling system.
16. Visually inspect all sprockets, chains, pulleys and pins.
17. Lubricate all points per lubrication chart recommendations.
18. Apply lubricant to rotation gear box and winch speed reducer.
19. Note any items found to be worn or damaged.

180 DAYS (720 HOURS) SAME AS 90 DAY BUT INCLUDES:

1. Inspect exposed hoses.
 2. Clean hydraulic tank breather.
 3. Check tightness of rotation bearing bolts, mast bearing, and bearing to pedestal for proper torque.
 4. Apply slip plate to outriggers
- If approved rotation bolt inspection will be performed at this time (Needs to be inspected once a year, per Terex.)

ANNUAL INSPECTIONS 12 MONTHS (1,050 HOURS) COMBINE 90 & 180 DAY INSPECTION BUT INCLUDES:

1. Inspect and lubricate PTO drive shaft to pump.
2. Take samples of hydraulic oil and test.
3. Check all system pressure for proper setting.
4. Perform critical weld inspection.

ELECTRICAL TESTS

Dielectric integrity of the booms must be tested after every major inspection of the Aerial Device, after every year or 2,000 hours of operation, whichever occurs first, or if the insulation value is in question.

TESTING UPPER BOOM

Control lines and hydraulic tool lines must be full of hydraulic fluid. Raise lower boom fully.

TEREX UTILITIES, INC., d/b/a TEREX SERVICES
("Seller")

TERMS AND CONDITIONS OF SALE

- 1. Terms and Conditions.** The provision by Seller to Buyer of any Equipment or Parts (collectively referred to as "Products") and field labor, reconditioning, repair, maintenance and inspection services (collectively referred to herein as "Services") shall be exclusively governed by these Terms and Conditions of Sale ("Terms and Conditions") and Seller's sales order (collectively referred to as "Agreement"). This Agreement cancels and supersedes any and all terms and conditions previously issued by Seller and shall remain in effect unless and until superseded in writing by Seller. Acceptance of an order for Products or Services by Seller shall be deemed to constitute a binding agreement between the parties pursuant to these Terms and Conditions and Buyer agrees that the order may not thereafter be countermanded or otherwise changed without the explicit prior written consent of Seller. No other terms and conditions shall apply, including the terms of any purchase order submitted to Seller by Buyer, whether or not objected to by Seller or whether or not such terms are inconsistent or conflict with or are in addition to these Terms and Conditions. These Terms and Conditions shall be deemed accepted by Buyer if any of the following occurs: (i) if confirmed by Buyer, (ii) if undisputed by Buyer within ten (10) days after receipt, or (iii) if Seller delivers Products or Services to Buyer. Any communication construed as an offer by Seller and acceptance thereof is expressly limited to these Terms and Conditions. The Products are intended for industrial/commercial use by professional contractors and their trained employees and are not intended for use by consumers.
- 2. Terms of Payments.** Payment for Products or Services purchased by Buyer shall be made in accordance with any of the following terms, provided they have been previously arranged with and expressly approved by Seller in writing: (1) cash in advance; (2) confirmed, irrevocable letter of credit established in such amount and form and at such time and at such bank as shall be approved by Seller in respect of each order; (3) credit account purchases for which payment will be due and payable on net thirty (30) day terms, plus service and other charges applicable to past due amounts in accordance with Seller's written notices; or (4) other payment arrangements expressly approved by Seller in writing prior to or at the time the order is placed. If any Buyer credit account purchase is not paid in accordance with Seller's credit payment terms, in addition to any other remedies allowed in equity or by law, Seller may refuse to make further shipments without advance payment by Buyer. Nothing contained herein shall be construed as requiring Seller to sell any Products or Services to Buyer on credit terms at any time, or prohibiting Seller from making any and all credit decisions which it, in its sole discretion, deems appropriate for Seller. Seller may charge interest on all amounts not paid when due and Buyer agrees to pay such interest calculated on a daily basis, from the date that payment was due until the Seller receives payment in full, at the rate of 1.5% per month or the maximum rate permitted by applicable law. Seller shall be entitled to an equitable adjustment in the price of Products or Services in order to account for increases in the cost to Seller of labor or materials, or in the event of unanticipated or unforeseen circumstances.
- 3. Taxes and Duties.** Unless otherwise specified, prices quoted do not include taxes or duties of any kind or nature. Buyer agrees that it will be responsible for filing all tax returns and paying applicable tax, duty, export preparation charge and export documentation charge resulting from the purchase of any Products or Services. In addition, in the event any other similar tax is determined to apply to Buyer's purchase of any Products or Services from Seller, Buyer agrees to indemnify and hold Seller harmless from and against any and all such other similar taxes, duties and fees. All prices quoted are U.S. DOLLARS unless otherwise specified. The amount of any present or future taxes applicable to the sale, transfer, lease or use of any Products shall be paid by Buyer; or in lieu thereof, Buyer shall provide

Seller with a tax exemption certificate satisfactory to the applicable taxing authority proving that no such tax is due and payable upon such sale, transfer, lease or use.

- 4. Title, Risk, Transportation and Delivery.** Unless otherwise stated in writing, all prices and delivery are FCA, Seller's Premises (Incoterms 2010). Title and all risk of loss or damage to Products shall pass to Buyer upon delivery, as per Incoterms 2010. Any claims for loss, damage or delay in transit must be entered and prosecuted by the Buyer directly with the carrier, who is hereby declared to be the agent of the Buyer. In the event delay in shipment of Products is caused by Buyer's failure to furnish necessary information with respect to data and details for Buyer's specifications, Seller, may, in its sole discretion, extend the date of shipment for a reasonable time. In the event delay in shipment is caused by Buyer or at Buyer's request, and there are Products that are not shipped within ten (10) days from the first date they are ready to be shipped, Seller may, in its sole discretion, sell such Products to another buyer without any liability or responsibility to Buyer whatsoever. All payments shall be made in accordance with the terms of the applicable invoice. In addition, storage charges due to delay in furnishing delivery instructions, arranging and establishing a method of payment satisfactory to Seller, or submitting valid import permits or licenses, or any other delay caused by Buyer or at Buyer's request, will be for the account of Buyer. SELLER SHALL NOT BE LIABLE FOR ANY LOSS OF USE OR FOR ANY OTHER INDIRECT, CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES OR LOSSES DUE TO DELAY IN SCHEDULED DELIVERY. Claims for shortages in shipments shall be deemed waived and released by Buyer unless made in writing within five (5) days after Buyer's receipt of shipment. Seller's responsibility for shipment shall cease upon delivery of the Products to the place of shipment, and all claims occurring thereafter shall be made to or against the carrier by Buyer.
- 5. Cancellation.** Seller shall have the right to cancel and refuse to complete a Products or Services order if any term and/or condition governing this agreement is not complied with by Buyer. In the event of cancellation by Seller, Buyer shall make reimbursement to Seller, as follows: (i) any and all work that can be completed within (30) days from date of notification to stop work on account of cancellation shall be completed, shipped and paid in full; and (ii) for work in progress and any materials and supplies procured or for which definite commitments have been made by Seller in connection with the order, Buyer shall pay such sums as may be required to fully compensate Seller for actual costs incurred. Buyer may cancel this contract and any of its obligations for any reason with 30-days prior written notice of Buyer's intent to cancel. Buyer shall have the right to cancel this agreement and their obligations contained herein at any time if any term and/or condition governing this agreement is not complied with by Seller. Upon notice of Buyer's intent to cancel, Buyer shall compensate Seller as follows (i) any and all work that can be completed within (30) days from date of notification to stop work on account of cancellation shall be completed, shipped and paid in full; and (ii) for work in progress and any materials and supplies procured or for which definite commitments have been made by Seller in connection with the order, Buyer shall pay such sums as may be required to fully compensate Seller for actual costs incurred. Buyer may not cancel any order after Seller's delivery to place of shipment. Orders for "Special" Equipment may not be cancelled after acceptance, except by Seller. Items of "Special" Equipment are those that differ from standard Seller specifications, have a limited market, or incorporate specifications that have been determined for a specific application. Determination of whether an item of Equipment is "Special" shall be made by Seller in its sole discretion.
- 6. Inspection and Acceptance.** Buyer agrees that it shall inspect the Products or Services immediately after receipt of Products or completion of Services and promptly notify Seller in writing of any non-conformity or defect within 10 days after the Products are put into service or the Services are completed, but not more than thirty (30) days after delivery or completion. Buyer further agrees that confirmation that the Products or Services comply with the order, its commercial use of the Products or its failure to give prompt notice of non-conformity or defect shall constitute acceptance. Acceptance shall be final

and Buyer waives the right to revoke acceptance for any reason, whether or not known by Buyer at the time of such acceptance. Acceptance shall automatically cause the provisions of Seller's warranty to apply and govern the rights, obligations and liabilities of the parties with respect to such nonconformity or defect, provided under no circumstances shall rejection give rise to any liability of Seller for incidental or consequential damages or losses of any kind.

7. Warranty for Products and Services.

- a. **For Equipment:** Seller warrants its new Equipment manufactured and sold worldwide to be free, under normal use and service, from defects in material or workmanship for the time period designated in the warranty applicable to the particular type, make and model of Equipment or, in the event no specific warranty exists for such Equipment, for a period of twelve (12) months from the date of delivery.
- b. **For Parts:**
 - i. Seller warrants that Parts supplied by Seller will be free, under normal use and service, from defects in material or workmanship for a period of twelve (12) months from the date of delivery, where Seller is the OEM of such Parts;
 - ii. Seller warrants that that Parts supplied in connection with a warranty repair on Equipment sold by Seller will be free, under normal use and service, from defects in material or workmanship for a period of time equal to the OEM warranty provided by the manufacturer of such Parts, but if there is no OEM warranty on such Parts, then such warranty period shall terminate upon the expiration of the warranty for the Equipment originally sold by Seller; and
 - iii. Seller warrants that Parts supplied in connection with Services performed by Seller on equipment not originally sold by Seller will be free, under normal use and service, from defects in material or workmanship for a period of time equal to the OEM warranty provided by the manufacturer of such Parts.
- c. **For Services:**
 - i. Seller warrants that its field and shop labor services will be free from defects in workmanship for a period of ninety (90) days from the date of completion of such services;
 - ii. Seller warrants that its labor supplied in connection with its reconditioning services on mobile equipment will be free from defects in workmanship for a period of six (6) months from the date of completion of such services; and
 - iii. Seller provides no warranty, express or implied, on its inspection services.

The foregoing warranties shall only be valid if Buyer sends Seller written notice of the defect within thirty (30) days of its discovery and establishes that: (i) the Equipment or Parts, or any equipment subject to any Service, has been maintained and operated within the limits of rated and normal usage; and (ii) the defect did not result in any manner from the intentional or negligent action or inaction by Buyer, its agents or employees. If requested by Seller, Buyer must return the defective Equipment or Parts to Seller's facility for inspection, and if Buyer cannot establish that conditions (i) and (ii) above have been met, then the foregoing warranties shall not cover the alleged defect. Failure to give written notice of defect within such period shall be a waiver of the foregoing warranties and any assistance rendered thereafter shall not extend or revive it. Equipment, accessories, assemblies, components and Parts which are not manufactured by Seller are subject to the warranty of their respective manufacturers. The foregoing warranties shall be void in the event Buyer has carried out modifications or reconditioning work on the Equipment or Parts without the prior written consent of Seller. The foregoing warranties shall not cover any item on which serial numbers have been altered, defaced or removed. Maintenance and wear parts are not covered by the foregoing warranties and are the sole maintenance responsibility of Buyer. The foregoing warranties are limited to the first retail purchaser and are not assignable

or otherwise transferable without the written agreement of Seller. THE FOREGOING WARRANTIES ARE EXPRESSLY IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE LIMITED WARRANTIES CONTAINED HEREIN. Seller neither assumes nor authorizes any other person to assume for Seller any other liability in connection with the sale of Seller's Equipment, Parts or Services. The foregoing warranties shall not apply to any Equipment or Parts or any part thereof purchased from Seller, or any equipment which was the subject of any Service performed by Seller, which has been subject to misuse, alteration, abuse, negligence, accident, acts of God or sabotage. No action by either party shall operate to extend or revive the foregoing limited warranties without the prior written consent of Seller.

- 8. Remedies for Breach.** IN THE EVENT OF ANY BREACH OF WARRANTY BY SELLER, THE PARTIES AGREE THAT SELLER'S LIABILITY SHALL BE LIMITED EXCLUSIVELY TO THE REMEDIES OF REPAIR OR REPLACEMENT (AT SELLER'S SOLE DISCRETION) OF ANY DEFECTIVE PRODUCT OR THE RE-PERFORMANCE OF ANY DEFECTIVE SERVICES COVERED BY THE WARRANTY. In no event shall any repair or replacement of any defective Equipment or Parts, or the re-performance of any defective Services covered by the Seller's warranties in Section 7 extend the length of such warranties beyond the applicable periods specified in Section 7 above.
- 9. Limitation of Liability.** NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, Seller AND ITS AFFILIATES SHALL NOT BE liable for, AND SPECIFICALLY DISCLAIM, Any LIABILITY FOR ANY: (A) lost profits and/or Business interruption (whether direct or indirect); and (B) incidental, INDIRECT, consequential (whether direct or indirect) or other damages or losses OF ANY KIND, including without limitation, labor costs, loss of use, equipment rental, third party repairs, investigation costs, personal injury, emotional or mental distress, penalties, loss of service of personnel, or failure of Products to comply with any applicable laws; whether or not arising from breach of contract, warranty, negligence, product liability or otherwise. Notwithstanding anything contained herein to the contrary, in no event shall Seller's liability exceed the total order value.
- 10. Limitation of Actions.** Any action for breach of this agreement must be commenced within one (1) year after the cause of action has accrued.
- 11. Specification Changes.** In the event Seller incurs additional expense because of changes in specifications or drawings previously approved by Buyer, or in the event Seller is required to modify the ordered Products, perform any additional Services, perform any additional work or supply any additional Products, the additional expense shall be added to the purchase price. Seller shall have the right, in its sole discretion, to accept or reject any changes in specifications requested by Buyer. In no event shall any changes in specifications be made or accepted thirty (30) days prior to launch date or thereafter.
- 12. Security Interest.** Buyer grants Seller a security interest in the Products purchased and the proceeds thereof. The security interest shall continue until payment in full of the purchase price and payment and performance by Buyer of all of its other obligations hereunder. Seller is entitled to all remedies of a secured party after default under the Ohio Uniform Commercial Code or other applicable law, including but not limited to the applicable Personal Property Security Act in Canada, in addition to all other rights provided by contract and by operation of law. Buyer agrees to pay to Seller, in addition to the interest on overdue sums due, reasonable attorney fees, court costs and other expenses of Seller incurred in enforcing Seller's rights. The Products purchased shall remain personal property and shall not become or be deemed a fixture or a part of any real estate on which it may be located. Buyer agrees to execute any

instrument or document considered necessary by Seller to perfect its security interest in the Products including, but not limited to, financing statements, chattel mortgages, deeds of trust, deeds to secure debt, mortgages or other security instruments.

- 13. Insurance.** Until the purchase price of any Product is paid in full or the Service is completed, the Buyer shall provide and maintain insurance equal to the total value of any such Product delivered hereunder against customary casualties and risks; including, but not limited to fire and explosion, and shall also insure against liability for accidents and injuries to the public or to employees, by adding Seller as additional insured with waiver of subrogation, and in an amount satisfactory to Seller. If the Buyer fails to provide such insurance, it then becomes the Buyer's responsibility to notify the Seller so that the Seller may provide same; and the cost thereof shall be added to the contract price. All loss resulting from the failure to affect such insurance shall be assumed by the Buyer.
- 14. Return of Products.** Products may be returned only with Seller's prior written consent and upon the following conditions: (i) such Products must be new, unused and undamaged (and not obsolete), in good working order and in first class marketable condition; (ii) such Products must have been originally purchased by Buyer from Seller within the previous twelve (12) month period; and (iii) such Products shall be returned in the same condition as that in which they were sold by Seller to Buyer, and in the original packaging. Notwithstanding the foregoing, wire rope, cut chain, electrical components, special orders of Products or any Products which are altered or manufactured pursuant to Buyer's requirements and specifications are not returnable. The price for the repurchase of such Products shall be the invoice price previously received by Seller from Buyer for the Products in question, net of freight and taxes, and less a restocking fee to be determined by Seller at the time of the return.
- 15. Patents, Copyrights, Trademarks, Confidentiality.** No license or other rights under any patents, copyrights or trademarks owned or controlled by Seller or under which Seller is licensed are granted to Buyer or implied by the sale of Products or the provision of Services. Buyer shall not identify as genuine products of Seller Products purchased hereunder which Buyer has treated, modified or altered in any way, nor shall Buyer use Seller's trademarks to identify such products; provided, however, that Buyer may identify such products as utilizing, containing or having been manufactured from genuine products of Seller as treated, modified or altered by Buyer or Buyer's representative, upon written prior approval of Seller. All plans, photographs, designs, drawings, blueprints, manuals, specifications and other documents relating to the business of Seller ("Information") shall be and remain the exclusive property of Seller and shall be treated by Buyer as confidential information and not disclosed, given, loaned, exhibited, sold or transferred to any third party without Seller's prior written approval; provided, however, that these restrictions shall not apply to Information that Buyer can demonstrate: (a) at the time of disclosure, is generally known to the public other than as a result of a breach of this agreement by Buyer; or (b) is already in Buyer's possession at the time of disclosure by from a third party having a right to impart such Information.
- 16. Default and Seller's Remedies.** In the event of default by Buyer, all unpaid sums and installments owed to Seller, shall, at the Seller's sole option, become immediately due and payable without notice of any kind to Buyer. In addition to its right of acceleration, Seller may pursue any and all remedies allowed by law or in equity, including but not limited to any and all remedies available to it under the Ohio Uniform Commercial Code. In addition to the foregoing, and not in limitation thereof, Seller shall have the right to set off any credits or amounts owed to Buyer against any amounts owed by Buyer to Seller.
- 17. Indemnification by Buyer.** Buyer hereby agrees to indemnify, release, defend and hold harmless Seller, its directors, officers, employees, agents, representatives, successors, and assigns against any and all suits, actions or proceedings at law or in equity (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) and from any and all claims demands, losses, judgments, damages, costs, expenses or liabilities, to any person whatsoever (including Buyer's and Seller's employees or any third party), or damage to any property (including Buyer's property)

arising out of or in any way connected with any act, omission, negligence or willful misconduct of Buyer, its directors, officers, employees, agents, representatives, successors or assigns with respect to its purchase, use, operation, maintenance or installation of any Services or any Parts or Equipment furnished hereunder, or any breach by Buyer of these Terms and Conditions of Sale. If Buyer fails to fulfill any of its obligations under this paragraph or this agreement, Buyer agrees to pay Seller all costs, expenses and attorney's fees incurred by Seller to establish or enforce Seller's rights under this paragraph or this agreement. The provisions of this paragraph are in addition to any other rights or obligations set forth in this agreement.

- 18. Installation.** Unless otherwise expressly agreed in writing, Buyer shall be solely responsible for the installation and erection of the Products purchased. Although Seller may in some cases provide a serviceman, data and drawings to aid Buyer with installation or start-up, Seller assumes no responsibility for proper installation or support of any Product when installed and disclaims any express or implied warranties with respect to such installation and support. Notwithstanding whether data and drawings are provided or a serviceman aids in the installation, Buyer shall indemnify and hold Seller harmless and at Seller's request, defend Seller from all claims, demands or legal proceedings (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) which may be made or brought against Seller in connection with damage or personal injury arising out of said installation or start-up.
- 19. On-Site Services.** In the event that Seller is providing Services at Buyer's worksite (or at a location designated by Buyer), Buyer shall provide Seller free and clear access and an adequate power supply in order to perform the Services. Buyer shall maintain safe working conditions at the worksite, including, without limitation, implementing appropriate procedures regarding hazardous materials and energization and de-energization of power systems. Buyer shall immediately remedy any unsafe working condition at the worksite. Seller shall be entitled to suspend or terminate the Services in the event it determines that the worksite is unsafe. Seller shall have no responsibility or liability for any pre-existing condition of the worksite including, without limitation, violations of safety rules, building codes, zoning ordinances or other laws or regulations ("Regulations"). In the event that any unsafe working condition or failure of the worksite to comply with a Regulation result in an increase in the Seller's cost of, or the time required for, performance of the Services, Seller may make an equitable adjustment in price and schedule. Buyer authorizes Seller to perform the disassembly and inspection of any equipment necessary to provide the Services, including provision of all necessary Parts and labor, and agrees that Seller is not responsible for any damage or loss due to causes beyond Seller's control. Unless expressly agreed in writing, Services do not include architectural/engineering services or structural changes to Buyer's premises.
- 20. Additional Terms of Equipment Services.** In the event Seller performs Services on Equipment for Buyer, Buyer hereby authorizes Seller to inspect and disassemble the Equipment provided, and authorizes Seller to perform the Services indicated in the applicable estimate, quote or work order (including provision of all necessary parts and labor). Buyer agrees that Seller is not responsible for: (i) damage or loss to the Equipment, or loss of personal property, caused by fire, theft, or causes beyond Seller's control, or (ii) delays in completion of Services caused by unavailability of parts or other causes. Buyer authorizes Seller and its employees to operate the Equipment on streets, highways or elsewhere for the purpose of testing and/or inspection. Buyer will be subject to a storage fee of \$20 per day for any Equipment left on Seller's premises more than fifteen (15) days after completion of the Services. Buyer grants Seller a security interest and lien in the Equipment and any parts supplied until payment in full of any amounts owed by Buyer to Seller. Seller is entitled to all remedies of a secured party after default under the Uniform Commercial Code in addition to all other rights provided under law or equity. Buyer agrees to pay to Seller, in addition to interest at the rate of 18% annually on overdue sums (or the maximum rate permitted by law), reasonable attorney fees, court costs and other expenses incurred by Seller in enforcing Seller's rights. Buyer agrees to execute any instrument or document considered

necessary by Seller to perfect its security interest in the Equipment. In the event Buyer fails to retrieve the Equipment within ninety (90) days after completion of the Services, Buyer grants Seller a power of attorney to sell, or otherwise dispose of, such Equipment and to convey title to a purchaser of such Equipment, and to apply any sale proceeds against any amount owed by Buyer to Seller. In the event of default by Buyer, all unpaid sums owed to Seller shall, at Seller's sole option, become immediately due and payable without notice of any kind to Buyer.

- 21. Force Majeure.** Neither party shall be liable to the other or be deemed to be in breach of this agreement by reason of any delay in performing, or any failure to perform, any of their obligations in relation to the Products or Services if the delay or failure was due to any cause beyond their reasonable control including (without limitation) strike, lockout, riot, civil commotion, fire, accident, explosion, tempest, act of God, war, epidemic, stoppage of transport, terrorist activity, supply shortage or changes in government, governmental agency, laws, regulations or administrative practices.
- 22. Anti-Corruption; Export Controls; No Boycotts.** Buyer agrees that it shall, and that any party retained or paid by the Buyer ("Retained Party") shall, comply with all applicable laws including, but not limited to, laws prohibiting public corruption and commercial bribery. Buyer further agrees that it shall, and that any Retained Party shall, comply with all applicable export controls, economic sanctions, embargoes and regulations regarding the export, re-export, shipment, distribution and/or sale of Products, technology, information or warranty related services. Buyer further agrees that it shall not, and any Retained Party shall not, export or re-export Products, technology, information or warranty related services directly or with its knowledge indirectly into Iran, Cuba, Syria, North Korea, the Crimea Region of the Ukraine or Russia without Buyer first obtaining written approval from Seller. Failure to comply strictly with this section and all applicable laws, regulations and licensing/approval requirements shall be grounds for immediate termination of this agreement by Seller. Notwithstanding anything to the contrary contained in any agreement between the Buyer and Seller or in any other document or agreement relating to the Products sold hereunder, Seller will not comply with requests related to the boycott of any country or other jurisdiction, except to the extent such boycott is required by or otherwise not inconsistent with United States law.
- 23. Telematics.** If a telematics system is included with the Equipment, the telematics system is administered by a third party ("Teleservice Provider") and collects a range of operational data about the Equipment including, but not limited to, usage, performance and reliability. Buyer consents to Seller's obtaining such data from the Teleservice Provider for warranty, product improvement, marketing and customer support purposes. In addition to the foregoing, Buyer consents to Seller's collection, management and reporting of data (personal and non-personal) about the Equipment including, but not limited to, fuel consumption, up/down times, operation, defects, parts replacement, movement and location. Buyer shall gain any prior explicit consent from its customers and/or any third party, as required by applicable laws, enabling Seller and/or third parties to provide teleservices and data to Buyer. Buyer shall comply with all applicable laws relating to the provision of teleservices, including without limitations any applicable data protection laws.
- 24. Construction and Severability.** This agreement constitutes the entire agreement between the parties regarding the subject matter hereto and shall be construed and enforced in accordance with the laws of the State of Ohio. Seller shall not be bound by any agent's, employees or any other representation, promise or inducement not set forth herein. The invalidity or unenforceability of any provisions of this agreement shall not affect any other provision and this agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- 25. Jurisdiction.** The parties agree that the proper and exclusive forum and venue in all legal actions brought to enforce or construe any of the provisions of this sales order agreement shall be in the United States District Court, Northern District of Ohio or, if federal jurisdiction is lacking in such legal action, in the state courts in Cleveland, Ohio.

- 26. No Assignment.** No rights or obligations arising under this agreement may be assigned by either party unless expressly agreed to in writing by the Buyer and Seller.
- 27. Mandatory Addendum.** Buyer and Seller acknowledge the terms contained in the Mandatory Addendum to All City of Tupelo Contracts, amended October 28, 2022 (hereinafter “Addendum”) attached hereto, and each agree that the provisions contained in the Addendum are incorporated herein by reference. In the event that any provision contained in these Terms and Conditions contradict with any provision contained in the Addendum, the terms of the Addendum shall control.
- 28. Miscellaneous.** Buyer represents that: (i) it is solvent and has the financial ability to pay for the Products or Services; and (ii) it has all requisite right, power and authority to perform its obligations under this agreement.

Signature: _____ Date: _____
Johnny Timmons, Manager
Tupelo Water & Light Department

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

CONTRACTING PARTY

Date: _____

Date: _____