

2024-016PW
Local
05/16/24 approved

CONTRACT

THIS AGREEMENT, made this the _____ day of _____, 2024, by and between the **CITY OF TUPELO, MISSISSIPPI**, hereinafter called "OWNER" and Falcon Contracting Co. Inc, doing business as (an Individual), (a Partnership, (a Corporation), or (a Limited Liability Company) 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 **LOCAL STREET MAINTENANCE MILL & OVERLAY PROGRAM – 2024 ANNUAL BID** 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 **214** 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 \$ 5,380,706.00 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) General Conditions of Work dated December 28, 2023
 - d) Signed Copy of Proposal Form and Bidder's Certificate
 - e) Executed Non-Collusion Form and Compliance statements
 - f) Executed Bid Bond
 - g) Contract

- h) Executed Payment and Performance Bond
- i) NSPE General Conditions
- j) Special Contract Provisions
- k) SPECIFICATIONS issued by TUPELO DEPARTMENT OF PUBLIC WORKS dated December 28, 2023

l) ADDENDA:

No. 1 Dated 4-26-24

No. _____ Dated _____

No. _____ Dated _____

No. _____ Dated _____

- m) 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 of an individual work order 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 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 ten 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 any duly authorized representatives thereof, access to books, documents, papers, and records of the CONTRACTOR which are directly pertinent to the project which is the subject of this CONTRACT, for the purpose of making audits, examinations, excerpts, and transcriptions, and CONTRACTOR agrees to insert an identical access to records clause into all subcontracts.

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

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

(\$ 5,380,706.00) *Five million, three hundred Eighty thousand, Seven hundred & six dollars*
(not less than one hundred percent of Contract amount)

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, MISSISSIPPI

BY: _____

NAME: _____

TITLE: _____

ATTEST:


BY: _____

NAME: _____

TITLE: City Clerk

(SEAL)

CONTRACTOR

BY: 

NAME: Will Swedenburg

TITLE: President

ATTEST:

BY: 

NAME: Robert Moore

TITLE: Vice President

(SEAL)



SECTION K – TECHNICAL SPECIFICATIONS
CITY OF TUPELO
LOCAL STREET MAINTENANCE MILL & OVERLAY PROGRAM
2024 ANNUAL BID

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TECHNICAL SPECIFICATIONS

TECHNICAL PROVISIONS FOR MDOT STANDARD SPECIFICATIONS

PART 1-GENERAL

- A. For any work provided under the contract pertaining to grading, drainage, paving, driveways, curb & gutter, granular material, utilities, erosion control, etc. included in the general requirements for the project, the Contractor shall utilize the applicable requirements per the Mississippi Standard Specifications for Road and Bridge Construction, 2017 Edition, (also referenced as MDOT Standard Specifications) unless a separate technical specification is provided for a specific item. In cases where the separate technical specification may be different than the MDOT Standard Specifications, the contractor may utilize the MDOT Standard Specifications if approved in writing by the Engineer.
- B. The Contractor shall perform the work for all specified items under the Mississippi Standard Specifications for Road and Bridge Construction, 2017 Edition, except where superseded by Special Provisions, Supplements to Special Provisions, or amended by revisions of the Specifications contained within the Contract Documents.
- C. The Contractor shall perform the work for all specified items under Mississippi Standard Specifications for Road and Bridge Construction, 2017 Edition, and the most current Special Provisions and/or Amendments. The Contractor shall be responsible for ensuring that the most current Special Provisions are utilized and that any Special Provisions and/or Supplements to Special Provisions are complied with for all materials specified in accordance with the MDOT Standard Specifications, 2017 Edition, whether included herein or not.
- D. Where applicable, the Contractor shall be required to provide materials, work, etc. in accordance with MDOT Roadway Design Standard Drawings and related details for the fabrication, installation and materials, especially pertaining to drainage pipe, drainage structures, traffic control, erosion control, etc.

PART 2 – MDOT SPECIFICATION ITEMS

- A. Excavation
- B. Granular Materials
- C. Asphalt (See Section C – SOW for exceptions related to alternate mix designs)
- D. Cold Milling
- E. Traffic Control / Temporary Signage
- F. Erosion Control (i.e. Silt Fence, Wattles, etc.)

SECTION G

Bond #9443716

PERFORMANCE AND PAYMENT BOND

CONTRACT BOND FOR Local Street Maintenance Mill & Overlay Program - 2024 Annual Bid

LOCATED IN THE COUNTY OF Lee, STATE OF MISSISSIPPI,

Know all men by these presents: that we, Falcon Contracting Co., Inc.
(Contractor)

(hereinafter "Principal"), a Corporation

residing at Columbus in the State of MS

and Fidelity and Deposit Company of Maryland
(Surety)

residing at Schaumburg in the State of IL

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

Five Million Three Hundred Eighty Thousand Seven Hundred Six & No/100-----

(\$ \$5,380,706.00) 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 the 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 therof, 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.

Falcon Contracting Co., Inc.
(Contractors) Principal

By *[Signature]*
Robert Moore - Vice President

Title: *Vice President*
(Contractor's Seal)



Fidelity and Deposit Company of Maryland
Surety

By *[Signature]*
Peggy L. Jackson, Attorney-in-Fact
Address: 1299 Zurich Way

Scaumburg, IL 60196-1056

Peggy L. Jackson
(Printed) Mississippi Agent

[Signature]
(Signature) Mississippi Agent

Address: Fisher Brown Bottrell Insurance, Inc.

P. O. Box 1490

Jackson, MS 39215-1490

(Surety Seal)
210252

Mississippi Insurance ID Number



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

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

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

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 6th day of October, A.D. 2023.



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

By: *Robert D. Murray*
Vice President

By: *Dawn E. Brown*
Secretary

**State of Maryland
County of Baltimore**

On this 6th day of October, A.D. 2023, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

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

Genevieve M. Maison

GENEVIEVE N. MAISON
NOTARY PUBLIC
BALTIMORE COUNTY, MD
My Commission Expires: 02/28/2025



Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

EXTRACT FROM BY-LAWS OF THE COMPANIES

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

CERTIFICATE

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

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies,

this day of



MJ Pethick

By: Mary Jean Pethick
 Vice President

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

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

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790