

AGREEMENT FOR ENGINEERING SERVICES

This agreement, made by and between the **City of Tupelo**, located in **Lee County**, Mississippi, hereinafter referred to as the Owner, and Cook Coggin Engineers, Inc., a Mississippi corporation, hereinafter referred to as the Engineers.

The Owner, through the **Tupelo Redevelopment Agency**, intends to **construct improvements to the fairgrounds through the Tupelo Fairgrounds Phase IV project** and has employed the Engineers, who agree to perform the various professional engineering services required for the design and construction of the work, as stated herein;

WITNESSETH:

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

SECTION A - PLANNING AND DESIGN ENGINEERING SERVICES

That the Engineers shall furnish Planning and Design Engineering Services as follows:

1. The Engineers will perform the necessary design investigations, accomplish the design and prepare the construction plans, specifications and contract documents. Design investigations will be limited to those required to perform the design and to prepare the plans and specifications.
2. The Engineers will prepare an opinion of probable cost based on the construction plans and specifications. However, since the Engineers have no control over the cost of labor, materials, equipment, services provided by others or over contractors' pricing methods, or over market conditions or competitive bidding, the opinion of probable cost will be based on the Engineers' professional experience and judgment; but the Engineers cannot and do not guarantee that proposals, bids or the construction cost will not vary from opinions of probable cost prepared by them.
3. Prior to the advertisement for bids, the Engineers will provide the necessary copies of plans, specifications, and contract documents for the Owner and the appropriate Federal, State, and local agencies from whom approval of the project must be obtained.
4. The Engineers will furnish additional copies of the plans, specifications and contract documents as required by prospective bidders, material suppliers, and other interested parties, but will charge the prospective bidders for such copies. After award of each contract, the Engineers will furnish the Owner the necessary contract documents for execution.

5. The Engineers will attend the bid opening, tabulate the bid proposals, make an analysis of the bids and furnish information for the Owner's use in awarding the contracts for construction. The notice of award and the notice to proceed shall also be prepared by the Engineers for execution by the Owner.

SECTION B - CONSTRUCTION ENGINEERING SERVICES

That the Engineers shall furnish Construction Engineering Services as follows:

1. The Engineers will provide general construction overview of the work of the Contractor as construction progresses by making site visits at intervals appropriate to the various stages of construction as the Engineers deem necessary, in order to observe as an experienced and qualified professional, the progress and quality of the Work. Such visits and observations are not intended to be exhaustive but rather shall consist of visual observation of materials, equipment, or construction work for the purpose of ascertaining that the work is in substantial conformance with the contract documents and with the design intent. Such overview shall not be relied upon by others as acceptance of the work, nor shall it be construed to relieve the Contractor in any way from his obligations and responsibilities under the construction contract.
2. The Engineers will review for general conformance with the design concept necessary shop and working drawings furnished by the Contractor.
3. The Engineers will provide bench marks and/or reference points to be used by the Contractor in staking the construction.
4. The Engineers will review the Contractor's estimates for progress and final payments.
5. The Engineers will make final review of the completed construction and provide a written record of such to the Owner.
6. The Engineers will prepare the summary change order.
7. The Engineers will provide the Owner with one set of record drawings. Record drawings will be developed from the construction plans based upon information provided by the Contractor. Because these drawings are based on unverified information provided by other parties which will be assumed to be reliable, the Engineers cannot and do not warrant their accuracy.

SECTION C- OWNER OBLIGATIONS

That Owner agrees to perform certain duties as follows:

1. The Owner shall provide access to and make all provisions for the Engineers to enter upon public and private lands as required for the Engineers to perform such work as

surveys and inspections in the development of the Project; and the Owner will indemnify the Engineers from any claims of trespass with respect thereto.

2. The Owner will provide property surveys, property plats and legal descriptions.
3. The Owner will negotiate for land rights and easements as necessary.
4. The Owner will provide topographies, soils investigations, environmental assessments, wetlands and flood plains determination as required.
5. The Owner will arrange for field and laboratory testing for quality control such as density and material tests as necessary.

SECTION D - COMPENSATION FOR PLANNING AND DESIGN SERVICES

That the Owner shall compensate the Engineers for planning and design engineering services based on a percentage of the Construction Contract Amount (Base Bid plus Additive Alternates, if any) as shown in Table I set forth in Attachment I which is attached hereto and made a part hereof by this reference.

The compensation for planning and design engineering services shall be payable in the following manner:

1. A sum equal to ninety-five percent (95%) of the total compensation for planning and design services based on the Engineers' Construction Cost Estimate (Base Bid plus Additive Alternates, if any) after completion and submission of the construction plans, specifications, cost estimates, and contract documents.
2. A sum equal to five percent (5%) of the total compensation for planning and design service based on Construction Contract Amount (Base Bid plus Additive Alternates, if any) immediately after the Engineers make recommendations for awarding the Contract.

Payment under this section will be adjusted after the construction contracts are awarded such that the aggregate of all sums paid to the Engineers under this section will not exceed 100% of the compensation determined on Construction Contract Amount (Base Bid plus Additive Alternates, if any).

If the work is bid in multiple projects or phases, each project or phase will be considered a separate project regarding compensation.

If the work is not let for public contract, compensation will be based on the Engineer's Construction Cost Estimate (Base Bid plus Additive Alternates, if any).

SECTION E - COMPENSATION FOR CONSTRUCTION ENGINEERING SERVICES

That the Owner shall compensate the Engineers for construction engineering services based on percentages of Total Actual Construction Cost as shown in Table II set forth in Attachment I.

The compensation for construction phase engineering services shall be paid on a periodic basis during the construction period based on percentage ratios identical to those approved by the Engineers as a basis upon which to make partial payments to the Contractor.

SECTION F - SPECIAL SERVICES

That, the Engineers shall furnish or obtain from others Special Services of the following types which will be paid for by the Owner as indicated below.

1. Planning and design engineering services in connection with change orders to reflect modifications of an ongoing project.
2. Services provided in conjunction with the Clearing House Environmental Reporting, Environmental Review Process and related reporting, which may include, but not limited to, Cultural Resource Survey; Preliminary Wetland Delineation....etc.
3. Provisions of topographies, soils investigations, environmental assessments, stormwater pollution prevention plans and permit applications, wetlands and flood plains determination.
4. Provision of property surveys, plats, descriptions of needed land and easement rights with maps or plans related thereto; assistance in negotiating for land and easement rights.
5. Provision of roadway and railroad permit applications and assistance in administration of permit requirements and making changes to active permits.
6. Preparing to serve or serving as a consultant or witness for the Owner in any litigation, arbitration, public hearing or other legal or administrative proceeding involving the Project.
7. Services associated with preparation of Anti-degradation Report and NPDES Permit Application.
8. Development of hydraulic assessments and/or hydraulic models and conducting hydraulic simulations to assess existing system deficiencies and to determine improvements needed to satisfy minimum regulatory requirements and/or system specific design criteria.
9. Design engineering services in connection with change orders to reflect modifications of the ongoing project.

10. Field and laboratory testing for quality control such as soil density and construction material tests.
11. Additional or extended services during construction made necessary by prolongation of the contract time of any prime contract by more than thirty days, or acceleration of the work schedule involving services beyond normal working hours.
12. Planning and design engineering services as set out under Section A to modify the construction documents for re-bid processes.
13. Services rendered in conjunction with start-up, operator training and preparation of operation and maintenance manuals.
14. Services in connection with preparing, re-formatting modifying or editing the construction documents for electronic or online bidding purposes.
15. Additional services in connection with the Project not otherwise provided for in this Agreement.

Payment for the special services specified in this section shall be based on the Special Services fee Schedule as set forth in Attachment II which is attached hereto and made a part hereof by reference. The Engineers will render to the Owner an itemized bill for such services.

SECTION G - GENERAL CONSIDERATIONS

1. The standard of care for engineering services performed or furnished by the Engineers under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. The Engineers make no warranties, express or implied, under this Agreement, or otherwise, in connection with the Engineers' services. The Engineers may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.
2. The Engineers shall not at any time supervise, direct or have control over any contractor's work, nor shall the Engineers have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, nor for any failure of any contractor to comply with laws and regulations applicable to the contractor's work.
3. The Engineers neither guarantee the performance of any contractor nor assume responsibility for any contractor's failure to furnish and perform work in accordance with the contract between the Owner and such contractor.
4. The Engineers have no authority to exercise any control over any construction contractor in connection with their health or safety precautions. The Engineers' construction

engineering services do not include any administration of jobsite safety which is the sole responsibility of the contractor. Any reference to safety in the contract document shall not create any duty of jobsite safety administration or oversight by the Engineers. Neither the professional activities of the Engineers, nor the presence of the Engineers at a jobsite shall relieve any contractor of their obligations and responsibilities for superintending or coordinating any health or safety precautions required by any regulatory agencies.

SECTION H - TERMINATION, ASSIGNMENT AND SPECIAL PROVISIONS

The Owner and the Engineers further agree to the following conditions:

1. Either the Owner or the Engineers may terminate this Agreement at any time with or without cause upon giving the other party 30 calendar day prior written notice. The Owner shall within 30 calendar days of termination pay the Engineers for services rendered and costs incurred to the date of termination in accordance with the compensation provisions of this contract.
2. The Owner acknowledges the Engineers' construction documents, including electronic files, as instruments of professional service. Nevertheless, the final construction documents (record drawings) prepared under this Agreement shall become the property of the Owner upon completion of the services and payment in full of all monies due to the Engineers. The Owner shall not reuse or make any modification to the construction documents without the prior written authorization of the Engineers. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineers, its officers, directors, employees and subconsultants against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the Owner or any person or entity that acquires or obtains the construction documents from or through the Owner without the written authorization of the Engineers.
3. The Engineers have not offered any fiduciary service to the Owner and no fiduciary responsibility shall be owed to the Owner by the Engineers or any of the Engineers' consultants as a consequence of this Agreement.
4. This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the Owner and the Engineers respectively and its partners, successors, assigns, and legal representatives. Neither the Owner nor the Engineers shall have the right to assign, transfer or sublet his interest of obligations hereunder without written consent of the other party.
5. This Agreement may be amended with mutual consent to conform to funding agency requirements.

6. In the use of pronouns throughout this agreement where appropriate, the singular shall include the plural, the plural the singular.

In witness whereof the parties hereto have made and executed this Agreement the _____ day of _____, 2020.

Owner: _____ City of Tupelo _____

Engineer: Cook Coggin Engineers, Inc.

By: _____

By:  _____

Jason Shelton, Mayor
Type Name & Title

John Mark Weeden, PE, Principal
Type Name & Title

Attest: _____

Kim Hanna, CFO
Type Name & Title

Physical 71 East Troy Street
Address: Tupelo, MS 38804

Physical 703 Crossover Road
Address: Tupelo, MS 38801

Mailing 71 East Troy Street
Address: Tupelo, MS 38804

Mailing P. O. Box 1526
Address: Tupelo, MS 38801

Phone: (662) 841-6513
FAX: (662) 840-2075
Email: jason.shelton@tupeloms.gov

Phone: (662) 842-7381
FAX: (662) 844-4564
Email: mweeden@cookcoggin.com

COOK COGGIN ENGINEERS, INC.
ENGINEERING SERVICES FEES SCHEDULE

AMOUNT	TABLE I	TABLE II
	PLANNING & DESIGN ENGINEERING SERVICES As a Percent of Construction Contract Amount (Base Bid plus Additive Alternates, if any)	CONSTRUCTION ENGINEERING SERVICES As a Percent of Total Actual Construction Cost
\$10,000	15.0	10.0
100,000	11.4	9.6
500,000	9.4	7.7
1,000,000	8.5	7.2
5,000,000	7.1	5.8
10,000,000	6.7	5.2
50,000,000	6.4	4.5

The fee for project cost falling between the figures shown in the table shall be interpolated to nearest one-tenth of one percent.

If the work is accomplished in phases requiring additional sets of contract documents, each phase is considered a new project for the purpose of determining compensation for planning, design and construction engineering services.

ENGINEER SERVICES FEE SCHEDULE

2019 PER DIEM RATES

<u>CLASSIFICATION</u>	<u>RATE</u>	<u>CHARGE</u>
Sr. Professional Engineer	\$166	per hour
Professional Engineer	\$134	per hour
Engineer Intern	\$95	per hour
Engineer	\$90	per hour
Professional Land Surveyor	\$116	per hour
Professional Geologist	\$130	per hour
Sr. Project Manager	\$128	per hour
Project Manager	\$116	per hour
Senior Civil Engineer Technician	\$72	per hour
Civil Engineer Technician	\$61	per hour
Sr. Designer	\$84	per hour
Designer	\$66	per hour
CADD (Operator)	\$46	per hour
Sr. Construction Administrator	\$96	per hour
Construction Administrator	\$82	per hour
Sr. Engineer's Representative	\$78	per hour
Engineer's Representative	\$58	per hour
Contract Administrator	\$76	per hour
Clerical	\$60	per hour
GIS Specialist	\$82	per hour
GPS/GIS Technician	\$75	per hour
Sr. Lab Technician	\$70	per hour
Field Technician	\$59	per hour
Lab Technician	\$45	per hour
Survey Crew Chief	\$72	per hour
Survey Crew Member	\$37	per hour
Boring Rig	\$130	per hour
Tank Climbing	\$134	per each
Passenger Vehicle Mileage	\$0.575	per mile
Boring Rig Mileage	\$2.00	per mile

Actual cost of special test and services of special consultants plus 15%

Rates are subjected to CPI adjustment annually.

2019 MATERIAL TESTING SERVICES FEE SCHEDULE

<u>Description</u>	<u>Unit Price</u>	<u>Unit</u>
<u>Soils/Aggregate Testing:</u>		
Laboratory Proctors	\$ 225.00	Each
Gradations (+10 Material)	\$ 90.00	Each
(-10 Material)	\$ 95.00	Each
Liquid/Plastic Limits	\$ 75.00	Each
Atterberg Limits (includes shrinkage limit)	\$ 100.00	Each
Nuclear Gauge Density Tests*	\$ 17.00	Each
Soil Cement Design	\$ 1500.00	Each
Soil Cement Cylinder Compression Test	\$ 50.00	Each
<u>Concrete Testing:</u>		
Concrete Testing* (Includes air content, slump, temperature and making concrete cylinders)		
Cylinder Compression Test	\$ 34.00	Each
Cylinder Compression Test with Tracking	\$ 36.00	Each
Beam Flexural Test	\$ 40.00	Each
<u>Asphalt Testing:</u>		
HMA Mix Properties (Includes asphalt content, percent moisture, extraction & gradation, percent air voids & VMA)	\$ 440.00	Each
Field Testing:		
Nuclear Gauge Density Tests*	\$ 17.00	Each
Density and Thickness of Cores*	\$ 31.00	Each
Cationic Emulsions:		
Saybolt Furol Viscosity & Residue by Evaporation	\$ 400.00	Each
Anionic Emulsions:		
Saybolt Furol Viscosity & Residue by Evaporation	\$ 300.00	Each

2019 Material Testing Services Fee Schedule (Continued)

Travel:

Mileage - Passenger Vehicle	\$ 0.575	Per Mile
Boring Rig	\$ 2.00	Per Mile

Equipment Time:

Boring Rig**	\$ 130.00	Per Hour
Asphalt Coring Rig**	\$ 65.00	Per Hour

Technician Time:

Professional Geologist	\$ 130.00	Per Hour
Sr. Lab Technician	\$ 70.00	Per Hour
Lab Technician	\$ 45.00	Per Hour
Field Technician	\$ 59.00	Per Hour

* Additional charges for Personnel Time and Travel apply.

** 4-hour Minimum plus Personnel Time and Travel apply.

Tests conducted and reported per applicable ASTM or AASHTO standards.
Rates are subject to adjustment annually.

2019 REIMBURSABLE EXPENSE SCHEDULE

Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

8" x 11" Copies/Impressions (B&W)	\$ 0.25 /page
8" x 11" Copies/Impressions (Color)	\$ 1.00/page
11" x 17" Copies/Impressions (B&W)	\$ 0.50/page
11" x 17" Copies/Impressions (Color)	\$ 2.00/page
Larger Format Drawings (B&W)	\$ 0.75/sq. ft.
Larger Format Drawings (Color)	\$ 3.00/sq. ft.

Air Transportation	at cost
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Meals and Lodging	at cost
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Rates indicated do not include any applicable personnel related expenses.
Reimbursable Expenses are subject to review and adjustment annually.

Mandatory Addendum to
All City of Tupelo Contracts
June 2015

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. (CITATION NEEDED.)
10. Provisions that limit the time for TUPELO to pursue legal actions are deleted and void.
Miss. Const. Art. 4, § 104; Miss. Const. Art. 4, § 100; Miss Code Ann. § 15-1-5; Miss AG Op; Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
11. TUPELO does not agree to submit to binding arbitration.
Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
12. TUPELO will make payments for all amounts owed under a contract agreement in accordance with state law.
Miss. Code Ann. § 31-7-305.
13. TUPELO advises for all contracts entered into, the provisions of the contract which will contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information, and shall be available for examination, copying or reproduction.
Miss. Code § 25-61-9 (7).
14. TUPELO must comply with Mississippi public records law. Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential.
Miss. Code § 25-61-9 (1).
15. Data processing software obtained by TUPELO under a licensing agreement that prohibits its disclosure and which software is a trade secret as defined in Miss. Code Section 75-26-3, and data processing software produced by a public body which is sensitive must not be subject to inspection, copying or reproduction under Mississippi public records law. "Sensitive" means only those portions of data processing software, including the specifications and documentation, used to:
(a) Collect, process, store, and retrieve information which is exempt; (b) Control and direct access authorizations and security measures for automated systems; (c) Collect, process, store, and retrieve information disclosure of which would require a significant intrusion into the business of the public body.

16. In compliance with the Mississippi Accountability and Transparency Act of 20058, all payments made by TUPELO will be posted on a public website _____ . The information posted will include: the date of payment, vendor name, vendor's city and state and the payment amount. The release of any such information supersede any applicable non-disclosure or confidentiality obligations of TUPELO.

Miss. Code Ann. §§ 27-104-151 to 159.

17. Any Contractor/Seller of TUPELO shall ensure compliance with the Mississippi Employment Protection Act. Miss. Code Ann. § 71-11-1, et seq. The provisions and requirements of the Mississippi Employment Protection Act supersede all conflicting contract provisions and requirements.

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Miss. Code Ann. § 71-11-1, et seq. The provisions and requirements of the Mississippi Employment Protection Act supersede all conflicting contract provisions and requirements.

19. TUPELO is prohibited from binding its successors in office to contracts, including leases, which result in taking away one 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).

20. 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 for any longer period than twenty-five years.

Miss. Code Anno. 21-27-1

21. 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