



Allen & Hoshall

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February 7, 2020

Debbie Brangenburg
Executive Director
Downtown Tupelo Main Street Association
1058 South Broadway Street
Tupelo, MS 38804

**RE: Fairpark Phase IV
Residential Underground Utilities Design**

Dear Ms. Brangenburg:

Enclosed is our Engineering Contract prepared at your request for the Fairpark Phase IV Residential Underground Utilities Design.

If there are any questions or you need additional information, please contact me at 901.261.4732.

Sincerely,

Allen & Hoshall

Bobby Davidson
Project Manager
bdavidson@allenhoshall.com

Cc: Scott Burleson, A&H

**AGREEMENT BETWEEN OWNER AND ALLEN & HOSHALL, INC.
FOR PROFESSIONAL SERVICES**

This is an agreement between Tupelo Redevelopment Agency ("Owner) and Allen & Hoshall, Inc., a Tennessee corporation ("Allen & Hoshall").

Owner intends to develop the Fairpark Phase IV, residential underground electric utilities, (hereinafter called the "Project").

Owner and Allen & Hoshall, in consideration of their mutual covenants herein, agree as follows:

SECTION 1 - BASIC SERVICES OF ALLEN & HOSHALL

1.1 General. Allen & Hoshall will provide for Owner professional services in all phases of the Project to which this Agreement applies as hereinafter provided.

1.2 Preliminary Design Phase. After written authorization to proceed Allen & Hoshall will:

(a) In consultation with Owner prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications, written description of the Project and opinion of probable Construction Cost.

1.3 Final Design Phase. After written authorization to proceed with the Final Design Phase, Allen & Hoshall will:

(a) On the basis of the accepted Preliminary Design documents and the opinion of probable Construction Cost prepare for incorporation in the Contract Documents final drawings (hereinafter called "Drawings") to show the general scope, extent and character of the work to be furnished and performed by Contractor and specifications prepared in conformance with the sixteen division format of the Construction Specifications Institute (hereinafter called "Specifications").

(b) Provide technical criteria, written descriptions and design data for Owner's use in filing applications for required governmental permits or approvals and assist Owner in consultations with appropriate governmental authorities.

(c) Furnish to Owner a revised opinion of probable Construction Cost based on the Drawings and Specifications.

(d) Prepare contract documents for review and approval by Owner, consisting of contract agreement forms, general conditions and supplementary conditions, bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

1.4 Bidding Phase. After written authorization to proceed with the Bidding Phase, Allen & Hoshall will:

(a) Attend pre-bid conferences and assist with bidding and project clarifications.

(b) Issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.

(c) Attend the bid opening, assist Owner in evaluating bids or proposals and in assembling and awarding contract for construction.

1.5 Construction Phase. During the Construction Phase:

(a) Visits to Site and Observation of Construction. Allen & Hoshall will make visits to the site at intervals appropriate to the various stages of construction as Allen & Hoshall & Owner deems necessary in order to observe the progress and quality of Contractor's work. The purpose of these visits to the site will be to enable Allen & Hoshall to better carry out its duties and responsibilities during the Construction Phase, and, in addition, provide for Owner a greater degree of confidence that the completed work of Contractor will conform generally to the Contract Documents.

(b) Defective Work. During such visits and on the basis of such observations, Allen & Hoshall may disapprove of or reject Contractor's work while it is in progress if Allen & Hoshall believes that such work will not produce a completed Project that conforms generally to the Contract Documents. Allen & Hoshall can neither guarantee the performance of the construction contract by Contractor nor assume responsibility for Contractor's failure to furnish and perform the work in accordance with the Contract Documents.

(c) Interpretations, Clarifications. Allen & Hoshall will issue necessary interpretations and clarifications of the Contract Documents and prepare work directive changes and change orders as required.

(d) Shop Drawings. Allen & Hoshall will review and approve (or take other appropriate action in respect of) Shop Drawings, samples and other data which Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

(e) Substitutes. Allen & Hoshall will evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor.

(f) Inspections and Tests. Allen & Hoshall will have authority, as Owner's representative, to require special inspection or testing of the work, and will receive and review all certificates of inspections, testings and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents.

(i) Inspections. Allen & Hoshall will conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that Allen & Hoshall may recommend, in writing, final payment to Contractor and may give written notice to Owner and the Contractor that the work is acceptable.

(k) Limitation of Responsibilities. Allen & Hoshall will not be responsible for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of their agents or employees or any other persons (except Allen & Hoshall's own employees and agents) at the site.

SECTION 2 - ADDITIONAL SERVICES

2.1 Services Requiring Authorization in Advance. If authorized in writing by Owner, Allen & Hoshall will furnish or obtain from others Additional Services of the following types which are not included as part of the Basic Services and will be paid for by Owner as indicated in Section 5:

- Preparation of applications and supporting documents for grants, loans or advances in connection with the Project
- Preparation or review of environmental assessments and impact statements

- Services to make measured drawings of or to investigate existing conditions or facilities
- Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, Owner's schedule, character of construction or method of financing
- Providing renderings or models for Owner's use
- Preparing documents for alternate bids requested by Owner for Contractor's work which is not executed or documents for out-of-sequence work
- Services during out-of-town travel required of Allen & Hoshall other than visits to the site or Owner's office as required by Section 1
- Assistance in connection with bid protests and rebidding contracts
- Property surveys or related engineering services needed for design purposes and to enable Contractor to proceed with his work
- Preparation of operating, maintenance and staffing manuals
- Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration or other legal or administrative proceeding involving the Project
- Services in connection with work directive changes and change orders to reflect changes requested by Owner if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered
- Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor
- Additional services during construction made necessary by work damaged by fire or other cause, a significant amount of defective or neglected work of Contractor, and default by Contractor
- Services in connection with any partial utilization of the Project by Owner prior to Substantial Completion
- Evaluating an unreasonable or extensive number of claims submitted by Contractor in connection with the work
- Time spent by Allen & Hoshall in performing its contractual responsibilities after the stated completion date of the construction contract
- Resident Inspector during construction phase

SECTION 3 - OWNER'S RESPONSIBILITIES

3.1 Owner will do the following, at Owner's expense and in a timely manner, so as to permit Allen & Hoshall's services to proceed expeditiously:

- Provide criteria and information as to Owner's requirements, including design objectives, space, capacity and performance requirements, expandability, and any budgetary limitations
- Furnish copies of design and construction standards which Owner will require to be included in the Drawings and Specifications
- Furnish to Allen & Hoshall data and professional interpretations prepared by or services of others, including borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; environmental assessment and impact statements; property descriptions, boundary, easement, right-of-way, topographic and utility surveys; geographic boundaries of wetlands and zoning, deed and other land use restrictions
- Provide engineering surveys to establish reference points for construction to enable Contractor to proceed with the layout of the work
- Furnish all required governmental approvals and permits for the Project

SECTION 4 - PERIODS OF SERVICE

4.1 The provisions of this Section 4 and the various rates of compensation for Allen & Hoshall's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase.

4.2 Upon authorization from Owner, Allen & Hoshall will proceed with the Preliminary Design Phase services.

4.3 After Owner acceptance of the Preliminary Design Phase Services, including the opinion of probable Construction Cost, and authorization from Owner, Allen & Hoshall will proceed with the Final Design Phase, and will prepare Contract Documents and a revised opinion of probable Construction Cost.

4.5 The Construction Phase will commence with the execution of the contract for the work of the Project and will terminate upon written recommendation by Allen & Hoshall of final payment on the contract.

SECTION 5 - PAYMENTS TO ALLEN & HOSHALL

5.1 For Basic Services. Owner will pay Allen & Hoshall for Basic Services under Section 1 on an hourly rate basis. The hourly rates are indicated below:

Principal	\$205.00
Project Manager	\$190.00
Senior Engineer	\$170.00
Design Engineer	\$155.00
Project Engineer	\$145.00
Engineer	\$135.00
Senior Designer	\$120.00
Designer	\$100.00
Senior Technician	\$ 95.00

Technician	\$ 85.00
Clerical	\$ 75.00

(a) An amount equal to Allen & Hoshall's Payroll Costs times a factor of 1.0 for all Basic Services rendered by principals and employees engaged directly on the Project.

(b) For services and Reimbursable Expenses of independent professional associates and consultants employed by Allen & Hoshall to render Basic Services, the amount billed to Allen & Hoshall therefore times a factor of 1.0.

(c) Allen & Hoshall's estimate of the amount that will become payable for Basic Services is \$46,000. If it becomes apparent to Allen & Hoshall at any time before Basic Services are about eighty percent completed that the total amount of compensation to be paid to Allen & Hoshall will exceed such estimate, Allen & Hoshall will give Owner written notice. Promptly thereafter Owner and Allen & Hoshall will review the matter of compensation, and either agree to compensation exceeding the estimated amount or will agree to a reduction in the remaining services so that total compensation will not exceed the estimated amount.

5.2 For Additional Services. Owner will pay Allen & Hoshall for Additional Services rendered by Allen & Hoshall's principals and employees engaged directly on the Project, on the basis of Allen & Hoshall's hourly rate schedule in Section 5.1.

5.3 For Reimbursable Expenses. Owner will pay Allen & Hoshall the actual costs of all Reimbursable Expenses incurred in connection with all Basic and Additional Services.

5.4 Times of Payments. Allen & Hoshall will submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon Allen & Hoshall's estimate of the proportion of the total services actually completed at the time of billing and will be payable by Owner monthly, upon receipt.

5.5 Other Provisions Concerning Payments. (a) If Owner fails to make any payment due Allen & Hoshall for services and expenses within thirty days after receipt of Allen & Hoshall's statement therefor, Allen & Hoshall may, after giving seven days' written notice to Owner, suspend services under this Agreement until all amounts due for services, expenses and charges have been paid; and (b) If payment is not received by Allen & Hoshall within the said 30-day period, the Owner will pay to Allen & Hoshall a late charge of one percent (1%) per month calculated on the unpaid amount from the date of the invoice until paid.

5.6 Definitions. "Reimbursable Expenses" means the actual expenses incurred by Allen & Hoshall or Allen & Hoshall's independent professional associates, such as expenses for transportation and subsistence incidental thereto; toll telephone calls and telegrams; reproduction of reports, drawings, specifications, bidding documents, photographic production techniques, and similar Project-related items. "Reimbursable Expenses" will also include expenses incurred for computer time and other highly specialized equipment, including an appropriate charge for previously established programs and expenses of photographic production techniques.

SECTION 6 - CONSTRUCTION COST AND OPINIONS OF COST

6.1 Construction Cost. The construction cost of the Project, referred to as "Construction Cost", means the total cost to Owner of those portions of the entire Project designed and specified by Allen & Hoshall. It will not include Allen & Hoshall's compensation, the cost of land, right-of-way, interest and financing charges or the cost of other services provided by Owner.

6.2 Opinions of Cost. Since Allen & Hoshall has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, Allen & Hoshall's opinions of probable Construction Cost are made on the basis of its experience and qualifications and represent its best judgment as experienced and qualified professionals, familiar with the construction industry; Allen & Hoshall cannot and does not guarantee that actual Construction Cost will not vary from its opinion of probable cost. If Owner wishes greater assurance as to Construction Cost, Owner will employ an independent cost estimator.

SECTION 7 - ALLOCATION OF RISKS - PROFESSIONAL LIABILITY INSURANCE

A. 7.1 Liability Limitation. To the fullest extent permitted by law, the total liability of Allen & Hoshall and independent professional associates and consultants, to Owner and anyone claiming by, through or under Owner, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to Allen & Hoshall's services, the project or this agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract of Allen & Hoshall, or independent professional associates or consultants, will not exceed the total compensation received by Allen & Hoshall under this agreement.

SECTION 8 - MISCELLANEOUS

8.1 Termination, Suspension or Abandonment. The obligation to provide further services under this Agreement may be terminated by either party upon thirty (30) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

In the event of termination not the fault of Allen & Hoshall, Allen & Hoshall shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in the following paragraph.

Termination Expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination. Termination Expenses shall be computed as a percentage of the total compensation for Basic Services and Additional Services earned to the time of termination, as follows:

1. Fifteen percent of the total compensation for Basic and Additional Services earned to date if termination occurs before or during Preliminary Design Phase services; or
2. Seven and one-half percent of the total compensation for Basic and Additional Services earned to date if termination occurs during any subsequent phase.

If the Project is suspended by the Owner for more than 30 consecutive days, Allen & Hoshall shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, Allen & Hoshall 's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of Allen & Hoshall's services.

8.2 Reuse of Documents. Allen & Hoshall will retain an ownership and property interest in all documents including Drawings, Specifications and computer sensible media, including but not limited to diskettes, tapes, etc., prepared or furnished by it pursuant to this Agreement, whether or not the Project is completed. Such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse without written

verification or adaptation by Allen & Hoshall for the specific purpose intended will be at Owner's sole risk; and Owner will protect and indemnify Allen & Hoshall from all claims, damages, losses and expenses including attorneys' fees resulting from any such improper reuse. Any such verification or adaptation by Allen & Hoshall will entitle Allen & Hoshall to further compensation at rates to be agreed upon with Owner.

8.3 Hazardous Materials. Except to the extent otherwise expressly provided in this Agreement, Allen & Hoshall shall have no responsibility for the discovery, presence, storage, handling, removal or disposal of, or exposure of persons to, or testing for, hazardous materials in any form on, in, under or about the Project or any adjoining or neighboring property or elsewhere, including but not limited to asbestos, asbestos-containing products, underground tanks, polychlorinated biphenyls (PCBs), radon, petroleum or petroleum products or other toxic or hazardous substances, wastes or materials.

8.4 Severability. If any provision of this Agreement or any part thereof will be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement will be enforceable and enforced as if such invalid or unenforceable provision or part had not been included.

8.5 Controlling Law. This agreement is to be governed by the law of the State of Mississippi.

8.6 Successors. This Agreement will be binding upon and inure to the benefit of Owner and Allen & Hoshall and their respective successors and permitted assigns. Neither party will have the right to assign any right, duty or interest hereunder without the written consent of the other party. Nothing under this Agreement will be construed to give any rights or benefits in this Agreement to anyone other than Owner and Allen & Hoshall, and their respective successors and permitted assigns.

8.7 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between Owner and Allen & Hoshall and supersedes all prior written or oral understandings. This Agreement may be amended, supplemented, or modified only by a written instrument signed by both parties.

SECTION 9 - ADDITIONAL PROVISIONS

9.1 This Agreement is subject to the following additional provisions:

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of _____, 20_____.

OWNER

ALLEN & HOSHALL, INC.

By: _____

Title: _____

Address for giving Notices:

Address for giving Notices:

1661 International Drive, Suite 100
Memphis, TN 38120
