

Tupelo Water and Light Department

Line Clearance Agreement

This AGREEMENT, made this _____, between Tupelo Water and Light Department, hereinafter called the "Owner" and R.O.W. Pro, LLC (*Contractor*), having its principal offices located at 2143 Hwy 348, Blue Springs, Mississippi 38828 and registered to do business in the State of Mississippi, hereinafter called the "CONTRACTOR". This AGREEMENT may not be modified nor amended except by written instrument executed on behalf of each party by an officer or other duly appointed representative.

WITNESSETH, that for and in consideration of the covenants and agreements hereinafter mentioned, to be performed by the parties hereto, and the payment hereinafter agreed to be made, it is mutually agreed as follows:

1. This AGREEMENT commences on February 1, 2022, and shall terminate on _____. The parties may agree in writing to renew this AGREEMENT for additional periods of time, either on the same terms and conditions set forth herein or upon such other terms and conditions as the parties may agree to in writing.
2. The following Exhibits are agreed upon in their entirety and shall be made an integral part of this AGREEMENT: Exhibits A, B, C, D, and E.
3. CONTRACTOR agrees to begin and complete the Work in a timely and competent manner and agreed upon mutually by CONTRACTOR and the OWNER.
4. This AGREEMENT, in all its provisions, applies to all Work done by the CONTRACTOR for the OWNER. Such work may consist of, but not be limited to, any and all maintenance, new construction, or emergency tree pruning, tree removal, right-of-way clearing including disposal of trees, limbs and brush.
5. CONTRACTOR shall furnish all supervision, labor, tools, transportation, equipment, and materials necessary to prune and/or remove all trees that may interfere with the OWNER's overhead distribution lines and cut brush on the OWNER's rights-of-way, dispose of the debris resulting from such work. The CONTRACTOR shall designate a supervisor, as the CONTRACTOR's representative in all matters relating to this AGREEMENT. Only the CONTRACTOR or the CONTRACTOR's supervisor shall direct and instruct the CONTRACTOR's employees, and under no circumstances shall the OWNER direct the workforce.
6. The CONTRACTOR agrees to complete all work in accordance with these specifications and sound arboricultural practices, and in a good and workmanlike manner as set forth by the OWNER and agreed upon by the CONTRACTOR. This includes, but is not limited to, safety, work quality, debris disposal, and customer pre-notification and good public relations and interaction. The CONTRACTOR shall promptly refer any issues that may arise pertaining to this AGREEMENT to OWNER. All decisions made by the OWNER under this paragraph are final in nature.
7. CONTRACTOR's supervisor shall ensure that every crew member is trained in and familiar with the proper pruning and tree removal procedures prior to starting work. The CONTRACTOR's supervisor shall be fully trained and knowledgeable in the sound arboricultural practices as defined by this specification, including ANSI Z133 and A300.

During the term of this AGREEMENT, CONTRACTOR (and its employees, agents and/or representatives) shall strictly be an independent contractor as to the OWNER, and not an employee of the OWNER. The OWNER shall not control the manner in which CONTRACTOR performs the services described herein. CONTRACTOR, however, agrees that any services performed by CONTRACTOR under this

AGREEMENT shall be completed in a timely and competent manner. No training will be provided by the OWNER. CONTRACTOR represents that its employees, agents and/or representatives are fully trained for the job to be performed hereunder and that the CONTRACTOR (or its employees, agents and/or representatives) are not in need of any training by the OWNER. CONTRACTOR understands that the OWNER has relied upon CONTRACTOR's representations in executing this AGREEMENT.

8. The CONTRACTOR shall have the sole responsibility for safe work practices, procedures, and the determination of safe working conditions for its employees. The CONTRACTOR shall be responsible for initiating, maintaining and supervising all necessary safety precautions and programs in connection with the work. The CONTRACTOR shall also take the necessary precautions to render the work area secure in order to decrease the probability of accident from any cause and to avoid delay in completion of the work.
9. Neither party shall be liable to the other for any expenses, loss or damage resulting from delays or prevention of performance arising from causes beyond its reasonable control caused by fire, flood, accident, strikes, civil commotion, governmental or military authority, insurrection, riots, embargo, and unavoidable delays in transportation, acts of God, or public enemy.
10. At any time during this AGREEMENT, the OWNER may request the CONTRACTOR to provide the necessary supervision, labor, tools, equipment, materials and incidentals necessary to assist emergency and/or storm restoration efforts. The CONTRACTOR that is awarded Time and Material (T&M) crews shall provide required labor and equipment within 120 minutes of receiving the call-out request from the OWNER. Charges for the call-out shall begin when the crew reports to the OWNER's designated assembly location. Charges for all "foreign" crews brought in to assist in major storm emergencies shall begin when they arrive at a pre-determined and approved mustering point for travel to OWNER. Time will end when all crews are released each day, or when they arrive back at their reporting point at the end of the storm activities.
11. The CONTRACTOR shall not take crews from the OWNER's property to complete emergency storm restoration activities at another utility.
12. The CONTRACTOR shall comply with all federal, state, county, municipal or other laws, codes regulations, permits and rules bearing upon the conduct of the work as specified, including but not limited to, the OWNER's safety rules, OSHA regulations, and Mississippi Department of Transportation regulations pertaining to work area protection (MUTCD, Current Edition). The CONTRACTOR shall also comply with the regulations set forth in the following standards: OSHA 1910.269, OSHA 1910.331, and ANSI Z133 and A300 and other applicable Federal regulations and standards. If any of the Guidelines or specifications or requirements herein conflict therewith, the CONTRACTOR shall promptly notify the OWNER in writing. The CONTRACTOR shall not perform any work contrary to such laws, ordinances, regulations and rules, and the CONTRACTOR shall bear all costs arising from failure to comply with all regulations and requirements.
13. The CONTRACTOR bears full responsibility to provide workers, including those of approved SUB-CONTRACTORS, who are fit for duty. The CONTRACTOR is required to develop and maintain a drug and alcohol prevention or testing program, which satisfies all State and Federal D.O.T. requirements and supports its ability to provide a trained, qualified and proficient work force. The CONTRACTOR shall provide a copy of its drug and alcohol prevention and testing program to the OWNER upon request.
14. Before commencing any work under this AGREEMENT, and at all times during the progress of such work, the CONTRACTOR shall fully comply with the Workers' Compensation Laws of Mississippi, and shall require like compliance of its approved SUB-CONTRACTORS, if any, and shall furnish satisfactory evidence thereof to the OWNER. This AGREEMENT is not

intended to constitute an agreement of hiring under the provisions of any Worker's Compensation or unemployment compensation law, any "old age" benefit law, or any similar law, and it shall not be so construed. CONTRACTOR agrees to accept full and exclusive liability for the payment of contributions, taxes or other costs imposed under such laws by the Federal and/or State Government, which are measured by remuneration paid to CONTRACTOR'S employees.

15. The CONTRACTOR shall ensure that it has complied with the Department of Homeland Security, Bureau of U.S. Citizenship and Immigration Services, Employment Eligibility Form I-9 for ALL employees performing work on ASSOCIATION worksites, including pre-approved SUB-CONTRACTORS where applicable. The CONTRACTOR shall, without limit, make available for examination and audit all documents related to the establishment of identity and citizenship necessary to ensure compliance upon the request of ASSOCIATION. The CONTRACTOR shall further complete a verification of valid social security number for each employee assigned to OWNER, through the E-Verify system and/or with the United States Social Security Administration, and provide such proof of valid social security number upon request.
16. It is understood that CONTRACTOR does not represent the OWNER in any capacity and has no authority to bind or obligate the OWNER for any payment or benefit, of any kind, nature or amount, to any person or entity other than the CONTRACTOR per the conditions of this AGREEMENT. This AGREEMENT between CONTRACTOR and the OWNER is exclusive within the confines of the work described and defined in this AGREEMENT. The OWNER may, at its sole discretion, contract with others to perform such work as not described and defined within this AGREEMENT. The OWNER may additionally contract with others to perform such work as described and defined in this AGREEMENT with the prior notification and written consent of CONTRACTOR. The OWNER may, at its sole discretion, itself perform any work the OWNER deems appropriate and necessary.
17. There are no understandings or agreements, written, oral or implied, between the Parties with respect to the subject matter of this AGREEMENT except those herein contained. No amendment of or change in this AGREEMENT shall be effective unless made in writing and executed by the Parties.
18. This AGREEMENT shall continue to remain in force for the duration of the AGREEMENT period. Either party may terminate this AGREEMENT for reason(s) given in writing in accordance with Exhibit A, General Terms and Conditions, Termination and Suspension. Additionally, the OWNER may issue an immediate "stop work" order, in writing for reasons given in accordance with Exhibit A should the CONTRACTOR fail to carry out the specified work to the standards set forth in the AGREEMENT or to comply with any of the provisions of this AGREEMENT.
19. OWNER will evaluate CONTRACTOR's performance on a quarterly basis, in the following areas:
 - Work completed on schedule – Target: Within 10% of quarterly budget/spend period
If OWNER determines that CONTRACTOR's performance is substandard according to the above criteria, OWNER will inform CONTRACTOR of substandard performance and establish a fair timeline in writing for improving performance to OWNER's standard. OWNER may cancel the remaining AGREEMENT according to guidelines set forth in Exhibit A.
20. This AGREEMENT shall be binding upon the parties hereto namely the OWNER and CONTRACTOR. CONTRACTOR shall not assign any of its rights or duties under this AGREEMENT, nor subcontract the whole or any part of the work to be performed hereunder,

without first having obtained the written consent of OWNER authorizing such assignment of AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this ____ day of, _____, 20____.

(CONTRACTOR)

By: _____

Print Name and Title

Signature

Tupelo Water and Light Department

By: _____

Print Name and Title

Signature

Witness

Witness

EXHIBIT A

GENERAL TERMS AND CONDITIONS

I. DEFINITIONS

As used in these General Conditions, the following terms shall have the following meanings:

"AGREEMENT" means the Line Clearance AGREEMENT between CONTRACTOR and OWNER to which this Exhibit is attached, including the Exhibit(s) (including these General Conditions) and Schedule(s) attached to such AGREEMENT, together with the purchase order(s), purchase order releases or similar writings issued by OWNER to CONTRACTOR relating to the Line Clearance AGREEMENT and any other specifications, drawings or other documents specifically referenced in any of the foregoing.

"OWNER" means Tupelo Water and Light Department.

"CONTRACTOR" means the company signatory to this AGREEMENT.

"SUB-CONTRACTORS" means a company, with written consent of the OWNER, contracted by the CONTRACTOR.

"Premises" means OWNER's site or such other premises (including premises owned or controlled by a third party) where the Work are or will be performed, together with all places contiguous thereto and in the vicinity thereof where materials, equipment, tools, appliances or other facilities required for the performance of the Work are or will be located or stored.

"Work" means any activity undertaken by the CONTRACTOR in furtherance of Line Clearance Operations, as specified in attached Exhibit(s), including, but not limited to: customer notification, customer complaint response and resolution, pruning, tree and brush cutting, and debris clean-up.

"URD" means underground used in Exhibit F.

"Hazardous Materials" shall include, but shall not be limited to, substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9061 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1802 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6910 *et seq.*), and all other environmental laws, rules and regulations, as the same may be in effect from time to time.

All other capitalized terms used herein shall have the meanings ascribed to them in these General Conditions or in the AGREEMENT.

II. GENERAL COMMERCIAL TERMS

A. CONTRACTOR's QUALIFICATION

1. CONTRACTOR must be well-established, qualified licensed, and trained and experienced in the clearing of power line rights of way and tree trimming.
2. CONTRACTOR must show that their equipment and facilities are sufficient and their workload so arranged as to meet the schedules called for by the Contract.

**B. CONTRACTOR'S INSPECTION AND KNOWLEDGE OF PLANS AND PREMISES;
COST OF PERFORMANCE**

By becoming a party to the AGREEMENT, CONTRACTOR represents it has:

- 1) Carefully and completely examined the drawings and specifications in the AGREEMENT (if any) affecting the Work and is fully informed as to all existing conditions and limitations, including laws and regulations of any governmental authority affecting OWNER Line Clearance Obligations or the CONTRACTOR, the Work or the Premises, and has included in its proposal all items implied or required to attain the conditions and performance contemplated by the AGREEMENT.
- 2) Satisfied itself as to existing construction, working space, storage space, access facilities and all other conditions pertaining to the Premises relative to the conduct of CONTRACTOR's operation by inspection of the Premises or otherwise.
- 3) Made due allowance in its proposal for any possible increase in cost of performance of the Work, including increases in the cost of materials and labor.

C. CHANGES IN THE WORK

1) **OWNER Changes**

OWNER shall have the right to order changes to be made in the Work. If these changes affect CONTRACTOR's costs, performance schedules, warranties and other provisions of the AGREEMENT, the prices and other affected provisions shall be equitably adjusted by agreement of CONTRACTOR and ASSOCIATION.

2) **CONTRACTOR Changes**

Subject to OWNER's prior written approval, CONTRACTOR may make changes in the Work without any change in the prices or the times by which CONTRACTOR must perform its obligations under the AGREEMENT.

3) **Payment for Changes**

All requests for payments for additions to the prices provided for in the AGREEMENT shall be shown separately on CONTRACTOR's invoices, and shall not be included with amounts applicable to the prices as originally specified in the AGREEMENT. All invoices covering additions or credits to the AGREEMENT shall refer to the specific change order or similar written authorization issued by OWNER with respect to the addition or credit.

D. TERMINATION AND SUSPENSION

1) **Termination With Cause**

If either party breaches any provision of the AGREEMENT (including, without limitation, the failure by CONTRACTOR to adhere to the performance standards set forth in the AGREEMENT), the other party may give notice of such breach to the defaulting party in writing. If the breach is not cured within thirty (30) days of delivery of such notice, the defaulting party shall be in default hereunder and the non-defaulting may elect to terminate the AGREEMENT, or to continue the AGREEMENT subject to receiving adequate assurances of performance from the defaulting party. OWNER shall have the right to stop the Work immediately for cause defined in writing and based on CONTRACTOR's failure to comply with any of the terms of the AGREEMENT. In the event OWNER terminates the AGREEMENT pursuant to this subsection II.D. (1), OWNER shall not be required to make any payments to

CONTRACTOR with respect to Work that has not been performed as of the date of termination. If the sum of all previous deposits and payments under the AGREEMENT with respect to the Work so terminated exceeds the amount owed to CONTRACTOR with respect to Work that have been performed as of the date of termination, the excess shall be immediately refunded to OWNER.

In the event of such termination, OWNER shall not be required to obtain the lowest alternate bid for completing work, yet uncompleted by CONTRACTOR, but may choose another bidder which in OWNER's sole judgment shall best accomplish such completion. Upon termination of AGREEMENT, neither the OWNER nor the CONTRACTOR bear any further financial or physical responsibilities to the other party as stated in the AGREEMENT. Completion of work or continued work as defined by the AGREEMENT beyond AGREEMENT termination will be performed and paid for under the sole discretion and responsibility of the OWNER.

2) Termination, Suspension, or Delay

OWNER may at any time on thirty (30) business days' notice to CONTRACTOR extend, suspend or delay CONTRACTOR's performance of the Work for OWNER's convenience. The OWNER shall not be required to make any payments to CONTRACTOR with respect to Work that has not been performed as of the date of early suspension or delay. If the sum of all previous deposits and payments under the AGREEMENT with respect to the Work so terminated exceeds the amount owed to CONTRACTOR, the excess shall be immediately refunded to OWNER. The OWNER may, at any time, on (60) calendar day's written notice of cause to CONTRACTOR terminate AGREEMENT in keeping with termination standards set forth in AGREEMENT.

CONTRACTOR likewise shall have the right to terminate the AGREEMENT upon providing ninety (90) days written notice of cause to OWNER. Should CONTRACTOR initiate such termination, OWNER shall not be required to obtain the lowest alternate bid for completing work, yet uncompleted by CONTRACTOR, but may choose another bidder which in OWNER's sole judgment shall best accomplish such completion. Upon termination of AGREEMENT, neither OWNER nor the CONTRACTOR bear any further financial or physical responsibilities to the other party as stated in the AGREEMENT. Completion of work or continued work as defined by the AGREEMENT will beyond AGREEMENT termination be performed and paid for under the sole discretion and responsibility of the OWNER.

3) Resumption of Work

If OWNER extends, delays or suspends CONTRACTOR's performance under subsection II.D. (2) of this Section, CONTRACTOR shall thereafter resume any Work extended, suspended or delayed as soon as is practicable when directed to do so by OWNER. Any dates for performance by CONTRACTOR which are affected by an extension, delay or suspension of OWNER shall be extended for a period not to exceed the time lost by reason of the extension, suspension or delay.

4) Temporary Deferment of Work

CONTRACTOR shall, without cost to OWNER, temporarily defer the execution of any portion of the Work when such action may be necessary in the opinion of OWNER for the proper advancement of the work of other contractors or for the installation of machinery, equipment or other work by OWNER, when the deferment may be accomplished without unreasonable interference with CONTRACTOR's schedule or arrangements, or when the Work interfere or threaten to interfere with the operation of OWNER's equipment.

5) Transition Cooperation

In the event of termination of the AGREEMENT by OWNER, CONTRACTOR will return to OWNER all OWNER data and documentation in CONTRACTOR's possession related to the Work.

6) Termination if Not Funded

CONTRACTOR recognizes that this AGREEMENT must be funded by budget approval of the Tupelo City Council of OWNER and, in the event the Tupelo City Council does not fully fund this AGREEMENT in the appropriate budget year, then upon written notice to CONTRACTOR, this AGREEMENT shall be immediately terminated.

E. ASSIGNMENT AND SUBCONTRACTING

(1) No Assignment

CONTRACTOR shall not assign its obligations to perform the Work or any part thereof and OWNER shall not be obligated to accept a tender of performance by any assignee, unless OWNER shall have previously expressly consented in writing to such assignment. Any attempt by the CONTRACTOR to assign its obligations without the consent of OWNER shall be void.

(2) Subcontractors

CONTRACTOR may not without the prior written consent of OWNER subcontract any of its obligations under the AGREEMENT. In the event that OWNER consents to the subcontracting of any portion of the Work, (i) such consent shall not relieve CONTRACTOR of its obligations under the AGREEMENT with respect to such Work, and (ii) CONTRACTOR agrees to bring the provisions of the AGREEMENT to the attention of and to bind every SUBCONTRACTOR (regardless of tier) to whom it subcontracts any of the Work by the provisions of the AGREEMENT as far as applicable to that portion of the Work to be performed by the SUBCONTRACTOR.

(3) No Third Party Beneficiaries

No provision of the AGREEMENT is intended or shall be construed to be for the benefit of any third party.

(4) Non-Waiver

The failure of either party to insist upon strict performance of this AGREEMENT by the other or the failure or delay by either party in exercising any rights or remedies provided in the AGREEMENT or by law shall not be deemed or construed as a waiver of any claims. No waiver by either party of a breach of any provision of the AGREEMENT shall constitute or be construed as a waiver of any other breach or of that provision. No payment or certificate, final or otherwise, shall be construed as (a) an acceptance of Work, (b) relieving CONTRACTOR of its obligations to make good any defects or consequences for which CONTRACTOR may be responsible, or (c) a waiver of any obligations of either party under the AGREEMENT.

(5) Hazardous Materials

CONTRACTOR shall not perform any Work, nor allow any subcontractor to perform any Work, in which any Hazardous Materials (as defined below) are used or incorporated, in whole or in part, in any manner which would violate the requirements of any existing laws, ordinances, codes, rules and regulations, orders or decisions of governmental authorities (including, but not limited to, any administrative consent

orders furnished to CONTRACTOR) having jurisdiction over the Premises, the Work or any part of either, or which would cause substantial damage or a risk of substantial damage to the environment, or in such a manner as to leave any residue which could be hazardous to persons or property or cause liability to OWNER. If CONTRACTOR discovers an existing or suspected presence of any Hazardous Materials in the course of performing the Work, it shall have the duty to cease providing such Work in that area and to immediately give written notice to OWNER.

III. COMMERCIAL PROCEDURES

A. PERMITS

The CONTRACTOR shall also obtain at its expense all other permits and licenses from government authorities and from private parties which are required in connection with the Work and the performance of the obligations of CONTRACTOR under the AGREEMENT.

B. SAFETY OF THE WORK; SECURITY

(1) Performance of Work

CONTRACTOR shall perform the Work in a proper, safe and secure manner to prevent loss, injury or damage to OWNER's property, to the Premises and to lives or persons, and shall comply with all applicable safety laws, rules and regulations of any governmental authority, including those contained in or issued pursuant to the Occupational Safety and Health Act of 1970, as amended; all applicable provisions covering OWNER issued by the State of Mississippi; and with all safety procedures which OWNER may prescribe in connection with the performance of the Work. CONTRACTOR shall provide and maintain all passageways, guard fences, lights, barricades and other facilities for protection required by governmental authorities or rendered reasonably necessary by local conditions. All barricades shall be arranged to ensure the safety of the workers and passersby.

(2) Use of Premises; Cleaning Up

CONTRACTOR shall confine its activities, the storage of materials and the operation of its employees to limits established by OWNER. CONTRACTOR shall at all times prevent the accumulation on the Premises of debris and upon completion of the Work shall remove all debris, tools, and surplus materials, and shall leave the Premises in good order and condition. CONTRACTOR shall prevent any unnecessary accumulation or scattering of materials, tools and equipment around the Premises, and shall conduct the Work in an orderly manner.

(3) Security Regulations

CONTRACTOR shall comply strictly with OWNER's regulations in effect at any time governing the admittance of CONTRACTOR's employees on the Premises and their identification while there. CONTRACTOR shall bind each subcontractor (regardless of tier), and all persons directly or indirectly subject to its direction or that of any SUB-CONTRACTORS, to strict compliance with these regulations and with such supplemental, precautionary requirements as OWNER may issue during the performance of the Work.

(4) Reports of Accidents

CONTRACTOR shall report promptly to OWNER any accident or unusual occurrence during performance of the Work, including personal injury or death to any employee or any member of the public, or any damage to any of OWNER's property, the Premises or adjacent property. Reports of severe personal injury or death to any person shall be made within one (1) hour. These reports shall be made to OWNER'S Manager (or successor position), except during non-business hours the report shall be made to OWNER's dispatch office. CONTRACTOR shall submit a copy of all accident reports to OWNER, within 24 hours after an accident.

OWNER shall provide prompt notification to the CONTRACTOR of an accident related to the Work when OWNER becomes aware of said accident.

C. PROVISIONS RELATING TO PAYMENTS

(1) Grounds for Not Paying Invoices

OWNER may decline to pay an invoice, in whole or in part, to the extent OWNER decides such action is necessary to protect OWNER from loss due to any of the following:

- (a)** Breach by CONTRACTOR of any of its obligations under the AGREEMENT (including the costs to OWNER of remedying the breach (whether by re-performing the Work or otherwise) and all other costs directly attributable to other Work that are required to be performed in connection with remedying such breach);
- (b)** Uninsured Third party claims filed or reasonable evidence indicating probable filing of such claims;
- (c)** CONTRACTOR's failure to properly pay SUB-CONTRACTORS or to properly pay for equipment, materials or labor;
- (d)** Damage to OWNER or any other person or entity where such damage arises out of the actual or alleged willful misconduct or negligent acts or omissions of CONTRACTOR, any subcontractor or their agents, employees or any other person for whom, directly or indirectly, CONTRACTOR or any subcontractor may be liable;
- (e)** Reasonable evidence that the Work will not be completed within the time requirements specified in the AGREEMENT or for the balance of the AGREEMENT price then unpaid;
- (f)** Unsubstantiated or unsupported amounts paid by OWNER to CONTRACTOR.

- (g) If the CONTRACTOR shall be adjudged bankrupt or shall become insolvent, or in the case the CONTRACTOR shall fail or refuse to supply adequate administrative and supervisory force, a sufficient complement of properly skilled workmen, or adequate equipment, tools or materials, or in the case the CONTRACTOR shall fail or refuse to make prompt payment for material or labor, or in the case the CONTRACTOR shall fail to prosecute the Work expeditiously and efficiently, or fail to comply with applicable laws and ordinances, or in the case the CONTRACTOR shall, in the judgment of OWNER otherwise fail or refuse to perform this AGREEMENT in any respect, then OWNER may, without prejudice to any other of its rights or remedies, and by written notice to the CONTRACTOR, terminate the AGREEMENT and the CONTRACTOR's rights thereunder and assume control of the CONTRACTOR's Work. The CONTRACTOR shall, if requested to do so in such written notice of termination or a written notice thereafter given, immediately remove its employees, representatives, tools, equipment, and other property from the jobsite. If the CONTRACTOR should fail to effect such removal within a reasonable period, they may be removed by OWNER at the CONTRACTOR's expense.

(2) Final Payment

In the event that OWNER so requests, final waivers of lien by all SUB-CONTRACTORS and material suppliers and affidavits that all bills for material and labor have been paid by CONTRACTOR and each subcontractor shall be furnished with the final invoice with respect to the Work. Acceptance by CONTRACTOR of final payment under the AGREEMENT shall constitute a waiver of all claims against OWNER under the AGREEMENT.

(3) Setoff

OWNER may set off against any amount payable under the AGREEMENT any and all present and future indebtedness of CONTRACTOR to OWNER (including any indebtedness for which OWNER may be primarily or contingently liable or ultimately responsible or which is or may become a lien on the Premises or any other property of OWNER) arising from the AGREEMENT or any other transaction between OWNER and CONTRACTOR, whether or not related to the Work or the AGREEMENT.

D. DOCUMENTATION AND PROPRIETARY INFORMATION

(1) OWNER'S Use of CONTRACTOR Information

OWNER shall not be prohibited from disclosure or use of proprietary or confidential information or documents relating to the Work which are required by OWNER in order to permit OWNER to obtain the full benefits of the Work.

(2) CONTRACTOR'S Use of OWNER Information

Except as may be required by CONTRACTOR for the performance of its obligations under the AGREEMENT, OWNER is not obligated under the terms of the AGREEMENT to provide CONTRACTOR with any information which OWNER considers proprietary. If OWNER transmits any information to CONTRACTOR, which OWNER considers proprietary, OWNER will so designate such information. CONTRACTOR shall use that information, and any other information that CONTRACTOR knows or has reason to know is proprietary or confidential to OWNER, exclusively in connection with the Work and shall not publish or otherwise disclose it to any third party.

E. DISPUTE RESOLUTION

(1) Negotiations

Should a dispute occur between OWNER and CONTRACTOR arising out of or relating to the AGREEMENT, the parties shall attempt in good faith to resolve the dispute promptly by direct or indirect negotiations.

(2) Work to Continue

In the case of any dispute (including any dispute which is or may be the subject of negotiation), Contractor shall continue to perform the Work pending final determination of the dispute, and OWNER shall continue to make payments to Contractor for those portions of the work completed that are not the subject of dispute, in accordance with the AGREEMENT.

(3) Lawsuits or Claims by Third Parties and or Insurance Coverage or Contractual Indemnity

Nothing in this Dispute Resolution Section of this AGREEMENT shall cover issues or disputes either directly or indirectly relating to a) Insurance Coverage; b) Lawsuits or Claims by Third Parties; c) Contractual Indemnity Obligations; and d) Legal Responsibility to any Third Party or Entity.

IV. MISCELLANEOUS

A. PUBLICITY

CONTRACTOR shall not refer to OWNER or any company affiliated with OWNER in any advertising or other publication in connection with goods or Work rendered by CONTRACTOR, without the prior written approval of OWNER.

B. CHOICE OF LAW; INTERPRETATION; SEVERABILITY; VENUE

The AGREEMENT shall be construed and interpreted in accordance with the internal laws of the State of Mississippi (as opposed to its conflicts of laws provisions) as though all acts and omissions contemplated thereby or related thereto occurred in Mississippi. The provisions of the AGREEMENT shall be interpreted where possible in a manner to sustain their legality and enforceability. The unenforceability of any provision of the AGREEMENT in a specific situation shall not affect the enforceability of that provision in another situation or the remaining provisions of the AGREEMENT.

The parties agree that the sole and exclusive venue for any litigation or dispute as between OWNER and CONTRACTOR shall be in either the chancery or circuit courts encompassing Lee County, Mississippi, and both parties by and through their execution of this AGREEMENT submit themselves to the jurisdiction of such courts.

EXHIBIT B

OPERATING TERMS AND CONDITIONS

I. COMPLETION SCHEDULES

- A. The CONTRACTOR shall have crews and equipment on OWNER's Premises and working on work awarded by the AGREEMENT by _____, or the first business day thereafter, of the fiscal year in which Work is awarded. The schedule shall consist of the OWNER's designation and definition of Work to be performed by CONTRACTOR either verbally or in writing followed by the CONTRACTOR's diligent performance of that WORK within the time frames and schedules mutually agreed upon by the OWNER and CONTRACTOR.
- B. The CONTRACTOR shall complete pruning and clearing progressively, from a starting point or points designated by the OWNER with no skips except for those caused by property owner objections. The CONTRACTOR shall promptly notify the OWNER of any work site or property owner where the CONTRACTOR is unable to achieve full specification clearance for any reason, before tree pruning or removal activities are begun at that location, such that OWNER has opportunity to resolve known customer concerns before pruning and clearing.

II. NOTIFICATION and PLANNING

- A. **Unless otherwise directed**, the CONTRACTOR shall pre-notify property owners for tree pruning, tree removal and brush maintenance and disposal when performing firm price line clearance, or unit price tree removal activities in rural areas as listed in EXHIBIT C, SECTION I, FIRM PRICE SCHEDULE. The pre-notification shall clearly communicate the prescribed pruning and brush disposal techniques that will be implemented. When debris will remain onsite, the CONTRACTOR shall clearly communicate to the property owner the condition in which it will be left. When site cleanup becomes delayed due to equipment problems, the CONTRACTOR shall clearly communicate the condition to the property owner, together with an expected time for final cleanup and resolution. All tree removal authorizations shall be in writing from the property owner.
- B. Work planning shall be done at least **five** business days ahead of all line clearance work in concert with notification efforts. Work planning shall include all brush cutting/mowing, pruning, unit price removals and mechanical trimming.

III. PUBLIC PROTECTION

The CONTRACTOR agrees to install and maintain the necessary warning signs and protective devices at locations where work is being performed to prevent accidents to the public or damage to the property and personnel of the OWNER or the general public. At all times, the CONTRACTOR shall adhere to all applicable Mississippi D.O.T safety regulations including, but not limited to, local, county, state and federal regulations.

IV. PUBLIC RELATIONS

- A. The CONTRACTOR agrees that its personnel and equipment shall at all times present a neat appearance and all work shall be done, and all complaints resolved by the CONTRACTOR to the satisfaction of the OWNER with due regard for the OWNER's public relations.
- B. The OWNER shall provide a decal or sign for each truck assigned to work on the OWNER's system that states "TWL Contractor", including lift trucks, chip trucks, crew trucks, supervisor trucks, etc. These decals will be provided and replaced by the OWNER during the duration of the AGREEMENT.

V. PUBLIC COMPLAINTS

The CONTRACTOR agrees that complaints of any nature received from a property owner, the OWNER, or public authorities shall receive immediate attention and all efforts shall be made for a prompt resolution. CONTRACTOR shall make initial contact with a property owner or a property owner's representative on the same day in which a complaint is reported. Complaints shall be resolved, or have a mutually agreed plan of resolution with property owner or property owner representative, within forty-eight (48) hours of the report. All complaints, and any action taken by CONTRACTOR in connection with such complaints, shall promptly be reported to the OWNER. All complaints not fully resolved within ten business days (or landowner signature on a documented plan of action with a specified date to complete) of initial report shall be considered overdue and the OWNER shall have the right to have repairs made and withhold cost for those repairs from CONTRACTOR's invoice for that work.

VI. CIRCUIT OPERATION

The CONTRACTOR agrees to secure from the OWNER information as to the nature of the circuits involved before work is commenced. It is understood by and between the parties that the electric circuits of the OWNER are to continue in normal operation during this work. The CONTRACTOR shall take all necessary precautions to guard against interfering with the normal operation of said circuits. In the event the CONTRACTOR'S employees cause an outage to occur, they shall immediately cease trimming activities to secure the work area and ensure worker and public safety, and shall immediately notify the OWNER.

VII. NORMAL WORK WEEK

The normal workweek will be Monday thru Friday between the hours of **8:00 a.m. and 5:00 p.m.** The OWNER may approve alternate work schedules, to accommodate holidays, time lost to inclement weather or other reasons approved by the OWNER.

VIII. REPORTS

During the course of any work under this AGREEMENT the CONTRACTOR shall regularly report crew locations, work completions and other required reports showing the nature, amount, specific locations of work performed and other pertinent information which may be requested by and in the format approved by the OWNER .

The CONTRACTOR shall submit an approved crew/work progress report for all time and material (T&M) showing billable labor and equipment hours for the week, together with all relevant work data as may be determined necessary by the OWNER. This report shall be submitted weekly and received by the close of business on Tuesday, for the preceding week (except when Tuesday is a holiday). Each T&M crew's weekly time/work completion report shall be submitted directly to the OWNER, with a copy to the home office. The report shall be sufficient to support billing.

IX. PERMITS

The CONTRACTOR agrees to secure all permits and licenses necessary for the work to be performed hereunder and to pay all charges and fees required for such permits and licenses.

X. CONTRACTOR CREW INSPECTIONS

The CONTRACTOR and the CONTRACTOR's supervisor are responsible for insuring that all line clearance activities are done to full specification, and are responsible for reviewing their own work for thoroughness and completion before reporting the work complete to the OWNER.

Once the CONTRACTOR has reported a project or a mutually agreeable portion of the work as complete, the OWNER shall perform timely inspections of the CONTRACTOR's work to ensure full compliance with specifications and evaluate work quality. The CONTRACTOR shall

promptly remedy any deficiency discovered by the OWNER during inspections. If remedies are not accomplished within 30 business days of written notification of detailed substandard WORK, the OWNER may suspend operations of the CONTRACTOR's crew(s).

XI. REPORTING HAZARDS

The CONTRACTOR's personnel traveling along power line rights-of-way on a frequent basis have an ideal opportunity to visually inspect the OWNER's line facilities for obvious hardware, pole, and/or cross arm condition that could cause service interruptions or create hazardous conditions to the general public. This inspection is not a detailed technical inspection of facilities. Rather it is a broad, general inspection resulting from "keeping your eyes open" and reporting an obvious condition that could be a hazard to life and property.

The CONTRACTOR's personnel shall immediately report to the OWNER all hazardous or potentially hazardous hardware, poles, cross arms or other facility conditions which they discover.

- A. If the condition does not pose an imminent hazard, the CONTRACTOR's Crew Foreman shall submit notification of the condition to the OWNER.
- B. If the condition poses an imminent hazard, the CONTRACTOR's Crew Foreman shall immediately report the condition to the nearest OWNER operating group or Dispatcher. While the Crew Foreman is reporting the condition, he should leave remainder of crew deployed at site to protect the public from the hazard. Safety shall be of utmost importance. The Crew Foreman shall instruct crew members to stay a safe distance from the hazard at all times.

XII. CONTRACTOR'S PERSONNEL

In the event the OWNER objects to any personnel of the CONTRACTOR, the OWNER shall submit notification of the objection and the cause for the objection to the CONTRACTOR with a request for removal of such personnel for cause. Upon mutual agreement between OWNER and CONTRACTOR the personnel objected to by written submission may by mutual consent of both OWNER and CONTRACTOR be removed from WORK premises or terminated from employment by the CONTRACTOR. Such objection request and removal shall in no way interfere with the CONTRACTOR's right to hire and discharge personnel. CONTRACTOR shall ensure that each of the CONTRACTOR's personnel on OWNER's premises has a current and valid federal/state issued identification, and that each of CONTRACTOR's personnel carries such federal/state issued identification on their person at all times.

XIII. CONTRACTOR'S SUPERVISION

The CONTRACTOR shall designate a General Foreman/Supervisor(s) who shall be in charge of the work and is the CONTRACTOR's representative in all matters relating to this AGREEMENT. The General Foreman/Supervisor and all other supervisory personnel assigned to the work shall be permanent employees of CONTRACTOR. The General Foreman/Supervisor shall maintain close contact with the OWNER.

The CONTRACTOR's General Foreman/Supervisor is required to:

- A. Supervise and regularly check their crews to assure that the work is being completed productively and in accordance with this Specification.
- B. Assure that all equipment, materials and supplies are available and in good working conditions for use by crews, but not personally repair trucks, chippers saws and the like. In the event a General Foreman/Supervisor assists with or works on the repair of equipment or tools, these hours shall not be billable hours.

C. Dispatch work to the crews and inform the OWNER of their progress.

D. Check Line Clearance job tickets and RIGHTS-OF-WAY vegetation management job tickets for completeness and accuracy, and initial each job ticket before submitting them to the OWNER.

E. Regularly update maps used to indicate work done and areas completed.

XIV. COMMUNICATION

CONTRACTOR shall maintain close communication with the OWNER. CONTRACTOR's General Foremen/Supervisor(s) shall have and keep in their possession functional cellular telephones with voicemail and text capabilities. CONTRACTOR shall provide daily notice of work locations of each crew. Each time and material crew shall be provided with adequate means for prompt communication and work dispatching, between the crew, the CONTRACTOR's supervision, and the OWNER.

XV. WORK COMPLETION and TERMS OF PAYMENT

A. Payment for firm price work completed will be paid at a per hour rate.

When performing firm price hourly contract WORK activities, the CONTRACTOR shall complete their work activities as systematically and uniformly as practicable, so as to facilitate preliminary field review and approval, and regular interim bi-monthly invoicing. The CONTRACTOR's General Foremen/Supervisor shall work closely with the OWNER to identify areas that are complete to specification, and are free of skips, customer problems and variances from specification requirements so as to provide a regular interim invoice for a mutually agreeable level of work. All interim bi-monthly invoice approvals are subject to OWNER inspection of WORK at their discretion. Interim bi-monthly invoice payments shall be authorized when all outstanding issues, concerns, and inspections are satisfied to the approval of the OWNER. Once any portion of the project is inspected and approved by the OWNER, said portion is not subject to subsequent and continued re-inspections unless re-inspections must be performed to assess pruning or clearing work that was not fully completed when interim payment was made for the area containing such work. All decisions made by the OWNER relating to workmanship, job quality, public relations and environmental quality, as referenced on page 1, paragraph 6 of the AGREEMENT are final and not subject to arbitration. Invoices for approved work shall be paid within one (1) day (same day) of receipt thereof.

B. Payments for all types of unit work, as listed in EXHIBIT C, SECTION II and for tree removal by stump diameter class shall be made only for actual work completed, audited and approved, provided said work is in accordance with the terms of this AGREEMENT. Audits by OWNER, with CONTRACTOR's General Foremen/Supervisor in attendance, shall form the basis for invoice submittal. The cost of all subsequent inspections due to substandard, incomplete or improper work will be deducted from CONTRACTOR's invoice for that work. The deduction shall be at the standard labor rate per hour plus transportation expense for OWNER's System Right-of-Way Foreman for the actual hours required to re-inspect the substandard work.

C. T&M work performed shall be submitted on regular bi-monthly invoices and will reflect, crew and equipment for actual billable hours and at the rates quoted in pricing EXHIBIT C, SECTION IV. Invoices including T&M work performed shall be supported by copy of the crew's time sheets for the month.

EXHIBIT C
T&M PRICE SCHEDULE

The OWNER may, on occasion, find it necessary and efficient to use the CONTRACTOR's crews on a Time and Material basis. Such work may include but not be limited to new construction, routine pruning, outage-threat tree removals, customer requests, hot spot work, and emergency storm work.

HOURLY LABOR RATES

The following terms and conditions shall apply to hourly work.

1. Use of T&M Pricing

The OWNER shall determine when T&M pricing will be used.

2. Overtime Hours

The OWNER shall not be liable to CONTRACTOR or its employees, agents and/or representatives for any overtime hours worked or for payment of such hours. OWNER's sole liability shall be to pay the agreed upon T&M pricing contained in this AGREEMENT.

3. Qualifications of all CONTRACTOR Employees

- A.** The CONTRACTOR shall provide employees physically capable of and with skills and experience necessary to efficiently perform any type of work assigned to them.
- B.** The CONTRACTOR shall ensure appearance and conduct of all CONTRACTOR employees is satisfactory from both the public and OWNER's viewpoint.
- C.** The CONTRACTOR shall ensure at least one employee at each work location can communicate effectively with the public concerning work methods, herbicides, restrictions, etc.
- D.** The CONTRACTOR shall not allow any employee to commence work who has not first been trained in the practices and procedures required by this AGREEMENT or the basic functions and responsibilities of work he will be performing. Every employee shall additionally be provided with and fully trained in the contents of the yellow handbook entitled "Pruning Trees Near Electric Utility Lines- A Filed Pocket Guide for Qualified Line Clearance Tree Workers" by Dr. Alex L Shigo.
- E.** The CONTRACTOR shall ensure that each of CONTRACTOR's personnel on OWNER's system has a current and valid government issued identification, and that each of CONTRACTOR'S personnel carries such government issued identification on their person at all times.

4. Special Training

The CONTRACTOR shall be responsible for all expenses involved with special training, beyond normal on-the-job training that may be required from time-to-time. This includes expenses involved with time and travel of Foremen, General Foremen, Supervisor's and Trainers to training sessions.

5. CONTRACTOR EMPLOYEE BENEFITS

The CONTRACTOR is responsible for administering its benefits program for its employees. Benefits are included in CONTRACTOR'S labor rates and firm price cost and shall not be otherwise billed to OWNER.

6. HOURLY/EMERGENCY WORK

- A.** The CONTRACTOR shall dedicate all men and equipment working within OWNER's service area for emergency work for OWNER whenever requested by OWNER.
- B.** The CONTRACTOR shall not take crews from the OWNER's property to perform emergency storm restoration at another utility.
- C.** Labor and equipment rates for hourly work shall be those specified in this EXHIBIT.

7. SUPERVISION

All costs associated with the CONTRACTOR's first line of supervision for time and material work shall be incorporated into the hourly rates for the crew. OWNER will not be invoiced separately for the General Foreman/Supervisor or equivalent, or their pick-up truck, cell phone, or other equipment associated with supervision and management of the crews.

EQUIPMENT SCHEDULE

CONTRACTOR shall furnish the following equipment in good, serviceable condition, reasonably free of excessive breakdowns as determined by the OWNER, at listed rates per hour. The CONTRACTOR agrees to provide equipment that is in good operating condition for T&M work and to maintain equipment in such a manner as to minimize breakdowns which might adversely affect crew production and performance. The listed rates shall not include operator(s) but shall include all costs for repairs, maintenance, operation, overheads and profit and shall be the sole compensation payable by OWNER to CONTRACTOR for use of said equipment. All tree-trimming trucks shall be properly equipped to handle any tree pruning or removal encountered. All equipment shall meet approval of ASSOCIATION before being permitted to work on OWNER's property. In addition the following conditions shall apply:

- 1.** Crew and equipment hours shall not be invoiced for the time equipment is inoperative due to maintenance or equipment failure. CONTRACTOR's personnel may continue to be invoiced while equipment is inoperative, provided CONTRACTOR personnel can conduct line clearance work while equipment is inoperative.
- 2.** Lift trucks shall be equipped with and be capable of running a hydraulic saw and pruner.
- 3.** All T&M crews shall be equipped with serviceable and operational small tools normally required to be included in the hourly equipment rates for each lift or manual crew, so as to most efficiently perform any tree-pruning or tree removal task assigned (including but not limited to hydraulic pruners and pole saws, ropes, hooks, saddles, throw line, throw weights, throw line bag/cube materials with dye used for stump spray where applicable and miscellaneous hand tools).
- 4.** Bucket truck prices shall include a minimum of two chain saws, of adequate size to efficiently perform all aspects of line clearance tree pruning and tree removal on each site encountered.