

**DOCUMENT 00500
AGREEMENT**

THIS AGREEMENT is entered into as of the **6th day of October, 2023** between the **City of Tupelo** (hereinafter called Owner) and **Liberty Electric** (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION 1. WORK

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: **Tupelo City Hall Natural Gas Generator Package System.**

SECTION 2. ENGINEER/ARCHITECT

Allen & Hoshall (hereinafter called Engineer/Architect) is to act as Owner's representative, and shall have the duties and responsibilities and the rights and authority assigned to Engineer/Architect in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

SECTION 3. CONTRACT TIME

3.1 **Completion.** The Work will be substantially completed on or before **December 31, 2024 for Tupelo City Hall Natural Gas Generator Package System**, and completed and ready for final payment in accordance with paragraph 14.8 of the General Conditions on or before **January 30, 2025.**

3.2 **Liquidated Damages.** Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner five hundred dollars (\$500) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if Contractor shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner Five Hundred Dollars (\$500) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

SECTION 4. CONTRACT PRICE

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents in current funds as follows:

ITEM 1	Tupelo City Hall Natural Gas Generator Package System	\$ <u>292,485.00</u>
	Authorized Contract Amendments	\$ <u>20,000.00</u>
TOTAL CONTRACT PRICE -		\$ <u>312,485.00</u>

Three Hundred Twelve Thousand Four Hundred Eighty Five Dollars and No Cents

All specified allowances are included in the above price and have been computed in accordance with the General Conditions.

SECTION 5. PAYMENT PROCEDURES

5.1 Applications for Payment. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer/Architect as provided in the General Conditions.

5.2 Progress Payments. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer/Architect on or about the 15th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values established in accordance with paragraph 2.8 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided in the General Requirements. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer/Architect shall determine, or Owner may withhold, in accordance with paragraph 14.3(d) of the General Conditions.

90% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 14.2 of the General Conditions).

90% of Work completed

5.3 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.8 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer/Architect as provided in paragraph 14.8 of the General Conditions.

SECTION 6. INTEREST

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

SECTION 7. CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this Agreement Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and all Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

7.2 Contractor has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions, and accepts the determination set forth in paragraph 4.2 of the General Conditions of the extent of the technical data contained in such reports and drawings upon which Contractor is entitled to rely.

7.3 Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

7.4 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by Contractor in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the General Conditions.

7.5 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.6 Contractor has given Engineer/Architect written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Engineer/Architect is acceptable to Contractor.

SECTION 8. CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire agreement between Owner and Contractor concerning the Work, consist of the following:

- (a) This Agreement.
- (b) Performance Bond, Payment Bond and other Bonds.
- (c) Notice of Award.
- (d) General Conditions.
- (e) Supplementary Conditions.
- (f) These Specifications - See Document 00003 - TABLE OF CONTENTS.
- (g) Drawings, consisting of a cover sheet and sheets numbered as listed in Document 00004 - LIST OF DRAWINGS, TABLES AND SCHEDULES of specification.
- (h) Addenda numbers 0 to 0 , inclusive.
- (i) Contractor's Bid.
- (j) The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.4 of the General Conditions.

The documents listed in paragraphs (a) through (j) above are attached to this Agreement (except as expressly noted otherwise above). There are no Contract Documents other than those listed above in this Section 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.4 of the General Conditions.

SECTION 9. MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2 No assignments by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and

specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from duty or responsibility under the Contract Documents.

9.3 Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreement sand obligations contained in the Contract Documents.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in quadruplicate. One counterpart each has been delivered to Contractor and Engineer/Architect, and two to Owner.

This Agreement will be effective on **October 6, 2023**.

Owner: **City of Tupelo**

By: *Todd Jordan*

[Corporate Seal]

Contractor: *Liberty Electric # Nettleton, MS LLC*

By: *Mitch Smith*



Attest: *Kim Hanna*

Attest: *Jennifer Green*
Oct. 10, 2023

Address for giving notice:
71 East Troy Street
Tupelo, MS 38804

Address for giving notice:

License/Certificate No.: _____

Agent for service of process:

(If Owner is a public body attach)
(evidence of authority to sign)
(and resolution or other document)
(authorizing execution.)

(If Contractor is a corporation)
(attach evidence of authority)
(to sign.)

END OF DOCUMENT