

APPROVED AS TO FORM

  
Office of the City Attorney

Prepared By: GDW/rd  
Council Work Session: 04/26/2020  
Presentation on: 05/05/2020  
Suspension of Rules: No

**RESOLUTION**

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MASTER AGREEMENT AND TASK ORDER DIRECTIVE NO. ONE FOR THE DOWNS DRAINAGE IMPROVEMENTS PROJECT (OCA #A20-0548/OCE FILE #2018.039.001)**

**BE IT RESOLVED BY THE CITY COUNCIL OF TUSCALOOSA AS FOLLOWS:**

1. That the Mayor is authorized to execute a Master Agreement with McGiffert and Associates, LLC for engineering and bid phase services for the Downs Drainage Improvements Project; and the City Clerk is authorized to attest the same.
2. That the Mayor is authorized to execute Task Order Directive No. One to the abovementioned Master Agreement and McGiffert and Associates, LLC has agreed to perform said services for Task Order Directive No. One at an estimated cost not to exceed \$162,579.00; and the City Clerk is authorized to attest the same.

FUNDING REQUIRED:  Yes  No

GFRFFI  
CDBG-DR  
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\_\_\_\_\_  
\_\_\_\_\_

By: Katy Metcalfe on behalf of Susan Snowden  
Chief Financial Officer

**COUNCIL ACTION**

Resolution ✓  
Ordinance \_\_\_\_\_  
Introduced \_\_\_\_\_  
Passed 5-5-2020  
2<sup>nd</sup> Reading \_\_\_\_\_  
Unanimous \_\_\_\_\_  
Failed \_\_\_\_\_  
Tabled \_\_\_\_\_  
Amended \_\_\_\_\_  
Comments: \_\_\_\_\_

STATE OF ALABAMA )  
TUSCALOOSA COUNTY )

MASTER AGREEMENT TO FURNISH THE CITY OF TUSCALOOSA,  
ALABAMA ENGINEERING AND BID PHASE SERVICES  
FOR THE DOWNS DRAINAGE IMPROVEMENTS PROJECT AND  
RELATED SERVICES BY TASK ORDER DIRECTIVE  
(OCA #A20-0548/OCE #2018.039.001)

WHEREAS, the City of Tuscaloosa ("City") desires to enter into an agreement with MCGIFFERT AND ASSOCIATES, LLC ("Engineer"), whereby Engineer will provide engineering and bid phase services for the Downs Drainage Improvements Project; and,

W-I-T-N-E-S-S-E-T-H:

THIS AGREEMENT is made and entered into on this the 11<sup>th</sup> day of May, 2020, by and between the City of Tuscaloosa, Alabama, a Municipal Corporation, Post Office Box 2089, Tuscaloosa, Alabama, 35403, hereinafter sometimes referred to as the "CITY" or the "OWNER" and the firm of MCGIFFERT AND ASSOCIATES, LLC a professional Engineering Firm, located at 2814 Stillman Boulevard, Tuscaloosa, Alabama 35401, hereinafter referred to as the "ENGINEER," whereby the ENGINEER will provide certain consulting, engineering and related services to the OWNER in the form of studies, evaluations, inspections and reports and designs as described herein by individuals possessing a high degree of professional skill where the personality of the individual(s) will play a decisive role and which is thereby exempt from the Alabama Competitive Bid Law, Ala. Code §41-16-51(a)(3)(1975), for the consideration hereinafter set forth, as follows:

ARTICLE 1. SCOPE OF SERVICES (THE PROJECT)

The scope of services shall consist of but is not necessarily limited to preparing construction plans and specifications for bidding, services during construction and other related services for the Downs Storm Drainage Improvements including storm drainage improvements designed in accordance with City of Tuscaloosa standards to accommodate a 25-year storm event; partial roadway reconstruction, sanitary sewer relocations, coordination with utility companies i.e. telephone, gas, power for relocation of facilities as needed to accommodate construction.

**Additional Services**

The Scope of Services, as specified in this Article, consists of descriptions of specific tasks to be performed by ENGINEER. However, the performance of any of the services must be authorized by a written Task Order Directive (TOD), executed by both parties. It is understood by and between the parties hereto that this agreement in and of itself, without subsequent Task Order Directives, does not obligate either party to perform services or pay consideration of any kind; rather this agreement establishes the basic contractual foundation and parameters of agreement between the parties to facilitate and govern the performance of subsequent TOD services by ENGINEER. This agreement therefore sets forth the basic tenets for the provisions of any such services once a TOD has been authorized.

In order for the ENGINEER to be authorized by the OWNER to proceed with the provision of any services as specified in Exhibit "A," the ENGINEER's representative must receive and execute a written Task Order Directive from the OWNER, executed by the Mayor on behalf of the OWNER. The Task Order Directive shall be an instruction from the OWNER to the ENGINEER to provide the service in regard to a given task and referencing and/or modifying services enumerated in Exhibit "A." The ENGINEER will commence to provide the services to the OWNER for the specified task identified in the TOD. Unless and until the ENGINEER receives a Task Order Directive in regard to

performing services for a specific task enumerated in Exhibit "A," it shall not provide any such services. All Task Order Directives shall be in writing. A TOD can modify and amend the scope of any particular service from that specified in Exhibit "A," but cannot amend a term or condition in the master agreement.

Provided; however, nothing herein contained shall obligate the OWNER to authorize or direct the ENGINEER to perform any given task. The OWNER expressly reserves the right and privilege to elect not to have a task or service performed, to have such task or service performed by its own forces, or to contract separately and independently with other firms or entities for any service or task or combination thereof as may be enumerated in Exhibit "A" or otherwise.

**NOTE:** This AGREEMENT does not contemplate nor encompass the provision of consulting and related services to OWNER for the actual design and/or construction of any public works project. Should a public works project subsequently be conducted by the OWNER in regard to the project, this AGREEMENT will not be utilized to provide consulting services in regard thereto, although the work product may be so utilized. The OWNER reserves the right to engage the services of any qualified Consultant on all or any part of such project without regard to the services previously provided herein by ENGINEER.

## **ARTICLE 2. BASIS OF COMPENSATION**

As consideration for providing the services referenced in Article 1, the OWNER shall pay the ENGINEER in the following manner:

### **A. COMPENSATION**

On each authorized TOD the ENGINEER will receive, for providing the services described in the Task Order Directive (TOD), compensation at the Hourly Per Diem Rate Schedule (Hourly Rate) reflected in Exhibit "B" plus expenses, subject to the maximums stated in each TOD.

Hourly rates are to be billed at fifteen (15) minute increments. (For example, if a task were to consume 25 minutes, it will be billed as 30 minutes). For ENGINEERs with offices more than 30 miles from the corporate limits of the City of Tuscaloosa, travel time will be billed as part of compensation but at no more than eighty percent (80%) of actual travel time from ENGINEER's offices to OWNER's designated sites.

The amount invoiced each month will be in accordance with the Hourly Rate Schedule reflected in Exhibit "B" plus expenses incurred for the Project. Upon OWNER's request, when billing for services to be compensated on an hourly rate basis, ENGINEER shall submit timesheets or other documentation satisfactory to OWNER to support said fee. The hourly rate shall only be charged while the ENGINEER is actively providing services.

Hourly rates are defined as those rates charged for work directly performed on the Project by ENGINEER at the indicated labor classifications of ENGINEER as set forth in Exhibit "B." These rates encompass all elements of compensation, expense and reimbursement including but not limited to profit, salary cost, general overhead, general overhead cost, payroll burden, indirect expenses, computing systems, special health and safety requirements of the Occupational Safety and Health Administration (OSHA), and telecommunications services, but not direct expenses and are subject to annual calendar year adjustments not to exceed the Consumer Price Index.

That, for the purpose of defining general overhead, general overhead costs are defined as a percentage of all firm wide direct salaries on all client projects necessary to cover salary overhead, defined as all firm wide taxes, payments, benefits, and premiums such as, but not limited to, workmen's compensation insurance, social security, state and federal unemployment insurance, medical-hospital insurance, salary continuation insurance, pension plan costs, and pro rata allowances for vacation, sick leave, and holiday pay applied as an average percentage of the

direct salary, all indirect salaries, incentive and retirement pay, buildings and equipment, taxes, licenses, insurance, professional education, cost of acquiring and maintaining computers, developing software and training staff, recruiting costs, business development expenses, general printing and reproduction costs, library and periodical expenses, business development expenses, executive, administrative accounting, clerical salaries and expenses, and all other generally accepted overhead expenses. General overhead also includes labor burden, indirect expenses and profit.

## **B. DIRECT EXPENSES**

That the ENGINEER's Direct Expenses are defined as the reasonable costs incurred on or directly for the PROJECT by the ENGINEER, other than the per diem hourly rate (as defined hereinbefore). Such Direct Expenses shall be computed on the basis of actual purchase price for items obtained from commercial sources and on the basis of usual commercial charges for items provided by the ENGINEER. Direct Expenses shall include, but not be limited to reasonable expenses for: necessary transportation costs, including mileage when the ENGINEER's own automobiles are used; meals and lodging; laboratory tests and analyses; computer services; telephone; printing; binding; and all costs associated with subconsultants, and other outside services and facilities. Meals and lodging and transportation costs shall be in accordance with the current reimbursement policy used by the OWNER's personnel.

## **C. COST ADJUSTMENT**

- (1) The ENGINEER will complete the work described in any TOD within the maximum cost established therein. The ENGINEER shall keep the OWNER informed of all progress on each TOD. The ENGINEER shall keep the OWNER advised as the work proceeds regarding any factors, occurrences, or developments, that may necessitate modifications, or revisions of the services of the TOD.
- (2) In the event that services stated in the Scope of Services for the TOD cannot, in the ENGINEER's opinion, be completed within the maximum cost specified therein, the ENGINEER will inform the OWNER in a timely manner of the additional estimated amounts considered necessary to complete the services as may be added in scope by mutual agreement, so that a new total cost may be authorized by the OWNER through an Amendment to the TOD.
- (3) Basis of Costs: The compensation listed herein at Article 2, Subsection A, is based on performing services during the calendar years 2020. Should the services authorized by a TOD be delayed beyond completion date because of circumstances beyond the control of the ENGINEER, the basis of payment may be renegotiated to provide for additional costs of services through an Amendment to this AGREEMENT or TOD as applicable.
- (4) Suspension, Delay, or Interruption of Work: The OWNER may suspend, delay, or interrupt the work of the ENGINEER or any of ENGINEER's subconsultants on any or all TODs for the convenience of the OWNER or for reasons beyond the control of the OWNER or ENGINEER. In the event such suspension, delay, or interruption of work necessitates an adjustment in the total compensation due the ENGINEER, the ENGINEER shall immediately so inform the OWNER in writing, and an adjustment may be negotiated for any reasonable increases in the cost of the ENGINEER's performance under this AGREEMENT, including personnel relocation and/or replacement costs and all other identifiable labor and expense costs through an Amendment to this AGREEMENT as herein provided.

## **D. LITIGATION ASSISTANCE**

The scope and extent of services to be provided under this AGREEMENT does not include costs of the ENGINEER for required or requested assistance to exclusively or directly support, bring, defend, or assist in litigation undertaken or defended by the OWNER, except for suits or claims between the parties to this AGREEMENT. However, documents, studies, any data or information or any instrument of service otherwise resulting from the performance of any TOD by the ENGINEER may be utilized by the OWNER in bringing,

defending, or otherwise assisting in litigation undertaken or defended by the OWNER without any additional costs to the OWNER.

All additional litigation assistance services requested by the OWNER or the ENGINEER will be provided pursuant to a separate TOD and shall be paid for on a cost reimbursable basis as described in Article 2.

Payment for such services shall be made in conformance with Article 3.

**E. TIME OF COMPLETION; LIQUIDATED DAMAGES**

The ENGINEER will complete the work described in any TOD and provide final instruments of service to OWNER within the time as stated in the TOD. The ENGINEER shall keep the OWNER informed of all progress on each TOD. The ENGINEER shall keep the OWNER advised as the work proceeds regarding any factors, occurrences, or developments, that may necessitate modifications, or revisions of the services of the TOD.

Time is of the essence. ENGINEER shall complete the work within the timeframe as stated herein. It is understood that the OWNER and/or others may supply ENGINEER with certain information and/or data, and ENGINEER will rely on such information, regarding integrity and timeliness. ENGINEER agrees to pay OWNER liquidated damages in the sum of Two Hundred Fifty (\$250.00) Dollars per business day beyond a specified date that the work on any phase of the project for which the ENGINEER has contracted with the OWNER remains substantially or partially uncompleted if attributable in whole to the ENGINEER. Should delays beyond ENGINEER's control occur, (e.g. delay in data), ENGINEER will not be responsible for payment of liquidated damages to the OWNER.

The above provisions are contingent upon persons or agencies, not under the ENGINEER's control, furnishing or completing reviews, approvals, information and work in conformance with the schedule to be prepared by the ENGINEER.

**F. COST LIMITATION FOR TASK**

Each TOD will specify a maximum cost limitation or not to exceed amount for the cost of the services authorized to be performed by ENGINEER for OWNER. This ceiling is a maximum amount the OWNER will pay and the ENGINEER will accept for the performance of the services in regard to the given Task Order Directive. The ENGINEER is not obligated to incur costs in excess of such ceiling or maximum nor is the OWNER obligated to pay ENGINEER in excess of the ceiling or maximum.

Provided; however, in the event the maximum cost limitation is not reached for any given TOD that the ENGINEER has performed, or in the event the OWNER elects not to fully perform a given TOD and the parties desire to exceed any other ceiling or maximum for an authorized TOD by electing to have performed additional services, then such ceiling or maximum may be elevated by an amount not to exceed the amount not otherwise expended on the completed TOD or TOD not fully performed. Provided; further, however, such exceeding of a maximum for a given TOD pursuant to the provisions hereof may only be performed by a written amendment to the TOD specifying the information required and approved by the OWNER.

**ARTICLE 3. PAYMENT FOR SERVICES**

Payment of compensation to the ENGINEER, as prescribed in ARTICLE 2, shall be made as follows:

**A. PAYMENT FOR SERVICES**

For all services authorized to be performed by a Task Order Directive, payment is due within thirty (30) days of receipt of billing, for services rendered during the month. The OWNER shall be invoiced monthly by ENGINEER. The invoice format will be to the satisfaction of the OWNER.

**B. INVOICES**

ENGINEER will endeavor to schedule and coordinate expenses, especially those associated with travel, in such a manner as to combine services on more than one TOD or services for each trip to OWNER's site, meeting, etc.

Each invoice of ENGINEER shall specify the contract number and the number of the TOD in regard to which the services have been performed.

ENGINEER will invoice expenses separately from services on each TOD and by reference to contract number, but each item of expense shall reference the particular TOD or TODs in regard to which they were incurred.

OWNER will remit payment to ENGINEER within thirty (30) days from receipt of invoice.

Provided; however, the OWNER may delay payment for a reasonable time on all or any portion of an invoice, without the accrual of any interest or charges, on the basis of improper, contested or inadequate explanation of invoices by ENGINEER.

In the event of such disputed or contested invoice, the OWNER shall only withhold that portion so contested, and the undisputed portion shall be paid in accordance with the provisions herein. The OWNER will exercise reasonableness in contesting any invoice or portion thereof.

**C. INTEREST**

If payment of the amounts due, or any portion thereof, is not made within sixty (60) days of receipt of billing, interest on the unpaid balance thereof will accrue at the rate of one and one-half percent (1½ %) per month and become due and payable at the time said overdue payments are made subject to the Owner's right to a contested invoice.

**D. EXCEPTION**

No invoice or expense shall be payable if it violates applicable regulations of a State or Federal agency that is providing all or a portion of the funds or is not approved by such State or Federal agencies for payment, in which case ENGINEER shall reimburse the OWNER any sums paid therefore. Provided; however, absent fraud or intentional misrepresentation by the ENGINEER, this will not relieve the OWNER of the obligation to pay the ENGINEER for services (not expenses) actually rendered.

**ARTICLE 4. OBLIGATIONS OF THE ENGINEER**

It is further mutually agreed by the parties hereto:

- A. ENGINEER shall perform services for the OWNER as stated in and referenced by Article 1 hereof and any issued TOD.**

**B. OPINIONS OF COST, FINANCIAL CONSIDERATIONS, AND SCHEDULES**

The opinions of cost, financial analyses and economic feasibility projections for the Project are to be prepared by the ENGINEER for the OWNER through the exercise of the ENGINEER's experience and judgment in applying presently available cost, pricing, or other data.

While the OWNER shall have the right to reasonably rely upon such information as a reasonable approximation or estimate based upon the professional judgment and services of the ENGINEER, it is recognized that the ENGINEER has no control over cost or price of labor and materials; unknown or latent condition of existing equipment or structures which may affect operations and maintenance (O&M) costs; competitive bidding procedures and market conditions; and time or quality of performance by third parties. It is also recognized that the ENGINEER may have no control over the quality, type, management, or direction of operating personnel and has no control over other economic and operational factors which may materially affect the ultimate cost or schedule of work or projects undertaken by OWNER subsequent to and based upon ENGINEER's study.

Therefore, while the ENGINEER does represent to the OWNER that such information represents the best professional judgment of the ENGINEER as a reasonable estimate or approximation, it does not warrant that the actual financial cost will not reflect some relative degree of variance from the ENGINEER's opinions of cost, financial analyses and economic feasibility projections.

**C. LEVEL OF COMPETENCE**

That the ENGINEER and all subconsultants retained by ENGINEER shall be responsible, to the level of competence presently maintained by other practicing professional organizations engaged in the same type of professional personal services in the United States, for the qualifications, certifications, professional and technical adequacy and accuracy of studies, investigations, specifications, reports, recommendations, documents, and other work products furnished under this AGREEMENT or any TOD.

**D. MEETINGS**

The ENGINEER or a representative of ENGINEER shall attend meetings as necessary with the OWNER and/or any other ENGINEERs working on the Project to discuss Project status, progress, submittals to State or Federal Agencies, etc., and other Project related matters on a weekly basis.

In addition to any meetings specified by a TOD, during the term of service on any TOD, ENGINEER or a representative of ENGINEER shall attend (unless excused by OWNER's representative) at least one meeting of the OWNER's Committee responsible for administering the task to brief the members thereof on the progress of the Project, ENGINEER's Project Director.

**E. REPORTS, INTELLECTUAL PROPERTY AND OWNERSHIP OF DOCUMENTS**

Periodic Reports: ENGINEER shall, at such time and in such format as the OWNER's representative may require, furnish such periodic reports concerning the status of the project as may be requested by the OWNER's representative. During the course of providing services, the ENGINEER shall furnish the OWNER, upon request, with copies of all documents and other materials prepared and developed in relation with or as part of the project. Such a request shall be reasonable and within normal business practices for such work.

Final Plans and Reports: The final plans, drawings, specifications, periodic reports, final reports or other documents generated by the ENGINEER as instruments of service pursuant to this agreement, are considered work made for hire and shall be the property and intellectual property solely of the City of Tuscaloosa as

OWNER. As instruments of service such documents may be used by the OWNER in subsequent phases of the project or program which is the subject of this AGREEMENT, for future improvements, repairs or expansions of and connections to the project or program, on subsequent projects or programs utilizing in whole or in part information or data in the instruments of service of the ENGINEER and also for reference and other information on other projects or programs all without any further compensation to or approval by the ENGINEER. The OWNER may also make submissions or distributions of any such instruments of service of the ENGINEER to meet official regulatory requirements or for other purposes in connection with the operations or business of the OWNER without any further compensation to or approval by the ENGINEER. The ENGINEER shall take the necessary measures to insure that the OWNER has the same rights as regards all subconsultant's instruments of service.

OWNER Logo and Name: The ENGINEER shall not use the City of Tuscaloosa's name or insignia or logo in any magazine, trade paper, newspaper, advertisement or other medium without first obtaining the written consent of the OWNER.

Critical Infrastructure information: Pursuant to Ala. Code §36-12-40 (1975) as amended by Acts of Alabama 2004-487, neither the ENGINEER, its officers, agents, employees or any subconsultant, shall at any time allow the dissemination or copying of any information exempted from public disclosure by this section and Tuscaloosa City Code §2-4(d) which specifically provides the location of critical infrastructure or critical energy infrastructure as defined in 42 U.S.C. §5195c(e) and 18 C.F.R. §388.113(c)(1), as amended, belonging to or provided to the OWNER.

Ownership of Non Instruments of Service: With the exception of instruments of service as previously identified herein, the parties acknowledge and agree that the intellectual property of either party shall remain the property of the respective party, including intellectual property developed during the course of this agreement such as working papers which include, but are not limited to, preliminary drawings and sketches, calculations, proprietary techniques, procedures or programs, project notes, memoranda, non-owner correspondence, etc., developed or employed in the performance of services to the OWNER which shall belong exclusively to the ENGINEER or its subconsultants. The ENGINEER shall clearly mark and identify any such documents or materials that are not instruments of service it deems intellectual property and/or copyrighted information. To the extent they are identified as such, the OWNER will take steps reasonably necessary with its employees with respect to the use, copy, protection, and security of such intellectual property of ENGINEER.

Provided; however, the OWNER is granted a perpetual license by ENGINEER to utilize any of such ENGINEER's intellectual property or copyrighted material in its possession for and on behalf of its internal operations, as well as maintenance, construction and repair of the project which was the subject of the agreement or in reference to any program developed or implemented utilizing the services of the ENGINEER pursuant to this agreement without further approval or compensation to the ENGINEER. Such license also extends to the right of the OWNER to utilize such intellectual property or copyrighted material during the course of any judicial, mediation, arbitration, or administrative proceeding, regardless of whether the matter concerns ENGINEER or the services or project to which this agreement pertains. The OWNER's license also extends to making submissions or distributions of such intellectual property or copyrighted material of ENGINEER to meet official regulatory or statutory requirements or for other purposes in connection with the project or program and future improvements, repairs or expansions of and connections to the project. Any of such submissions or distributions or usage of ENGINEER's intellectual or copyrighted material shall not be an infringement and shall not be construed as publication or use in derogation of the ENGINEER's rights.



**F. RECORDS AND INSPECTIONS**

ENGINEER shall maintain complete and accurate records with respect to all matters performed or expense incurred pursuant to this agreement. The OWNER shall have free access at all proper and reasonable times to such records and the right to examine and audit the same and to make transcripts therefrom and to inspect all program data, documents, proceedings and activities of ENGINEER in regard to the Project. Such inspection shall not be in violation of confidentiality guarantees as elsewhere provided herein.

**G. EFFECT OF STATE AND FEDERAL LAWS AND REGULATIONS.**

The Scope of Services as defined herein and as provided by ENGINEER are based upon those federal and state laws, regulations or requirements in effect on the date of execution of this agreement. State or federal laws, regulations or requirements enacted or promulgated after the date of said execution shall automatically be incorporated by ENGINEER into the Scope of Services to the extent applicable. If such incorporation substantially increases the level of effort required of the ENGINEER, the basis of the compensation as defined herein shall be subject to renegotiation between the parties. It shall be the responsibility of the ENGINEER to promptly notify OWNER of any such changes in State or Federal laws or regulations or requirements which would effect his/her scope of services or level of effort.

**H. CONFIDENTIALITY**

All documents, information, memoranda and all other such written or verbal information provided by the OWNER to ENGINEER shall be held strictly confidential by ENGINEER and any of its subcontractors and shall not, without the prior written consent of the OWNER, be used for any purpose other than the performance of this agreement, nor be disclosed to any other entity not connected with the performance of this agreement. Any entities requesting such information shall be directed by ENGINEER to contact OWNER's representative.

**I. CONFLICTS OF INTEREST**

The ENGINEER represents and warrants to the OWNER that neither it nor any of its subconsultants are aware of any conflict of interest which exists or could arise by means of its provision of services to the OWNER pursuant to the terms and conditions of this agreement. This is an exclusive personal service agreement and ENGINEER will not represent the interest of any other person, firm or entity that conflicts with the interest of the OWNER in regard to the subject matter of this agreement or the performance of services pursuant to the terms and conditions hereof.

It is understood by and between the parties hereto that neither the ENGINEER nor any of its officers , agents or employees nor any subconsultant to the ENGINEER nor any subsidiary, parent entity, principal officers nor any entity having a beneficial interest in any of the same , may submit a bid or proposal in response to any request for proposals or advertisement for bids resulting from the services provided in whole or in part pursuant to this agreement."

**ARTICLE 5. OBLIGATIONS OF THE OWNER**

It is further mutually agreed by the parties hereto:

**A. OWNER-FURNISHED DATA**

That, the OWNER shall provide to the ENGINEER all technical data in the OWNER'S possession, including previous reports, maps, surveys, and all other information in its possession that the ENGINEER informs OWNER'S representative is needed and relating to the ENGINEER's work on the PROJECT. Such information

shall include, but not be limited to, the OWNER's requirements for the PROJECT, and any criteria or constraints known to OWNER. Unless otherwise indicated by the OWNER, the ENGINEER may reasonably rely upon the adequacy of the information provided by the OWNER in performing ENGINEER's services to the OWNER, subject to the same recognitions and caveats applicable to ENGINEER's information as provided herein at Article 4. B and with the further recognition that the OWNER is not responsible for the adequacy or accuracy of information and/or data prepared or supplied by third parties.

**B. ACCESS TO FACILITIES AND PROPERTY**

The OWNER shall make its system, facilities and properties available and accessible for inspection by ENGINEER.

**C. TESTS**

That, unless a part of the Scope of Services, the OWNER shall perform or have performed by others at no cost to ENGINEER such tests of equipment, machinery, pipelines, and other components of the OWNER's system facilities as may be reasonably required in connection with the Scope of Services under this AGREEMENT.

**D. TIMELY REVIEW**

That the OWNER, through its designated representative, shall examine all studies, reports, proposals, and other documents submitted by ENGINEER, obtain advice of an attorney, insurance counselor, accountant or auditor, as it deems appropriate for such examination in a timely manner so as not to delay the services of ENGINEER.

**E. TIMELY NOTICE**

That, the OWNER through its designated representative shall give timely written notice to ENGINEER whenever he or she observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect in the work of the ENGINEER.

**ARTICLE 6. GENERAL LEGAL PROVISIONS**

It is further mutually agreed by the parties hereto:

**A. AUTHORIZATION TO PROCEED**

That, authorization for the ENGINEER to proceed with services shall only be upon execution of a written Task Order Directive signed by both parties.

**B. PROJECT REPRESENTATIVES**

That, the OWNER and the ENGINEER respectively will designate a person(s) to act as authorized representatives of the OWNER and the ENGINEER in matters and decisions pertinent to the timely prosecution of this project, and each authorized representative shall have the power to obligate their party within the parameters of this agreement including, but not limited to, transmitting instructions, receiving information, making project-related decisions not requiring official OWNER approval and other matters. Neither representative shall have the authority to vary the terms and conditions of this Agreement.

**C. REPRESENTATIVE CAPACITY:**

While ENGINEER's role will be that of ENGINEER to the Owner, ENGINEER shall be and remain an independent contractor and not act in the role of an agent or legal representative on behalf of the OWNER. ENGINEER shall not have the authority to bind or obligate the OWNER, its officers, agents or employees.

**D. TERMINATION:**

- (1) This AGREEMENT or any Task Order Directive may be terminated by the OWNER for its convenience by giving thirty (30) days' written notice to the ENGINEER.
- (2) This AGREEMENT or any Task Order Directive may be terminated by the ENGINEER upon thirty (30) days' written notice to the OWNER, but only if the OWNER should substantially fail to perform in accordance with this AGREEMENT through no fault of the ENGINEER or if the performance of the Scope of Services by the ENGINEER is stopped by conditions beyond the control of the ENGINEER. Failure to perform includes failure of OWNER to promptly pay the ENGINEER in accordance with ARTICLE 3.
- (3) In the event of termination, the ENGINEER shall be paid in full for all work previously authorized and performed on any Task Order Directive up to the termination date, including expenses incurred by the ENGINEER, if the ENGINEER delivers to OWNER all instruments of service completed or partially completed by the date of termination.
- (4) If no termination is implemented, relationships and obligations created by this AGREEMENT shall terminate upon completion of all applicable requirements of issued Task Order Directives.
- (5) **Loss of Grant Funds**  
It is understood and agreed to by and between the parties that to the extent any of the compensation to ENGINEER is payable by OWNER from the proceeds of the Grant, if the OWNER loses its eligibility to receive or continue to receive Grant funds or for any reasons the OWNER no longer can receive or obtain Grant funds, then the ENGINEER agrees it shall immediately terminate the provision of any services pursuant to any TOD on the Project upon notification from the OWNER of this fact. While the OWNER shall compensate the ENGINEER for services rendered and expenses incurred, it will not be liable to ENGINEER or any of ENGINEER's subconsultants for any services rendered subsequent to the date of notice, nor will the loss of Grant funds and termination of services constitute the basis of any claim whatsoever against OWNER by ENGINEER. ENGINEER agrees to indemnify and hold harmless the OWNER of and from any claim or cause of action arising out of or in any manner associated with termination of services due to a loss of Grant funds from ENGINEER and/or any subconsultant. Provided; however, if the OWNER loses Grant funding due to a failure of the ENGINEER or any of ENGINEER's subconsultants failure to perform services pursuant to any TOD, then ENGINEER shall be liable to OWNER for all such Grant funds and shall refund to OWNER any compensation and expenses paid by OWNER for such services.

**E. ASSIGNMENT**

- (1) That, this AGREEMENT is to be binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other. No assignment of this AGREEMENT shall be effective until the Assignee assumes in writing the obligations of the assigning parties, and delivers such written assumption to the other original party to this AGREEMENT.
- (2) Use of subconsultants by the ENGINEER or subsidiary or affiliate firms of the ENGINEER for technical or professional services shall not be considered an assignment or a portion of this AGREEMENT. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER and ENGINEER.

**F. COURT OF JURISDICTION**

That, if the OWNER and ENGINEER cannot resolve any outstanding claims, counter-claims, disputes, and other matters in question arising out of or relating to this AGREEMENT, then resolution of said disputes shall be decided by a court of competent jurisdiction.

**G. INSURANCE**

That, unless waived in writing by the OWNER's representative, the ENGINEER shall secure and maintain throughout the duration of this AGREEMENT insurance of such type and in such amounts as may be necessary to protect its interests and the interests of the OWNER, its officers, agents and employees against hazards or risks of loss as hereinafter specified. The underwriter of such insurance shall be qualified to do business in Alabama. The certificates of insurance shall contain a provision that not less than 30 days' written notice shall be given to the OWNER before any policy or coverage is canceled. Without limiting the requirements hereinbefore set forth, the insurance coverages shall include a minimum of:

- (1) Workmen's compensation and employer's liability insurance as required by the State of Alabama.
- (2) Comprehensive automobile and vehicle liability insurance. This insurance shall be written in comprehensive form and shall protect the ENGINEER and the OWNER against claims for injuries to members of the public and/or damages to property of others arising from employer's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations under this AGREEMENT, and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned or hired. The limit of liability shall not be less than a \$1,000,000 combined single limit or equivalent.
- (3) Commercial general liability. This insurance shall be written in comprehensive form and shall protect the ENGINEER and the OWNER against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the ENGINEER or of any of its agents, employees, or subcontractors. The limit of liability shall not be less than a \$1,000,000 combined single limit.
- (4) The ENGINEER shall furnish professional liability insurance coverage in an amount not less than \$1,000,000 and subconsultants shall provide limits commensurate with the responsibilities of their work.
- (5) The insurance coverages specified above shall constitute minimum requirements and the OWNER, its officers, agents and employees shall be named as an additional insured in insurance coverages identified in items "2" and "3".

**H. INDEMNIFICATION**

Each party shall generally be responsible for its own acts and omissions, and each party will be responsible for all civil liability that may arise out its own performance of this Agreement. Subject to all defenses and limitations of liability provided by law, the ENGINEER shall defend, indemnify, and hold harmless City and all of its officers, agents and employees, from and against any civil liability arising out of any act or omission of the ENGINEER; and likewise subject to all defenses and limitations of liability provided by law City shall defend, indemnify, and hold harmless the ENGINEER and all of its officers, agents and employees, from and against any civil liability arising out of any act or omission of City.

**ARTICLE 7. PERSONNEL**

- A.** The ENGINEER agrees to assign experience and competent professional personnel to provide the services to the OWNER pursuant to this agreement. The ENGINEER represents to OWNER that the following persons are so qualified and are assigned to this project or, with the consent of OWNER'S representative, individuals with similar experience and qualifications:

Project Chief Consultant: Jimmy Duncan, PE/PLS  
Project Manager: Jimmy Duncan, PE/PLS

Project Subconsultants are as follows:

N/A

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B. The OWNER'S designated representative shall be Wendy Shelby, Office of the City Engineer of the City of Tuscaloosa.

C. All notices, bills, invoices and reports required by this agreement shall be sufficient if sent by the parties hereto in the United States Mail, postage prepaid thereon to the addresses noted below:

Client: Wendy Shelby  
Office of the City Engineer  
2201 University Boulevard  
Tuscaloosa, Alabama 35401

With a copy to: Glenda Webb  
City Attorney  
City of Tuscaloosa  
2201 University Boulevard  
Tuscaloosa, Alabama 35401

Engineer: Jimmy Duncan, PE/PLS  
McGiffert & Associates, LLC  
2814 Stillman Boulevard  
Tuscaloosa, Alabama 35401

D. ENGINEER represents and warrants to the CITY that its Project Chief Consultant / Project Manager for the principle performance of services by ENGINEER pursuant to the terms and conditions of this agreement shall be and remain Jimmy Duncan, P.E. and there shall be no change in the Project Chief Consultant without the prior written consent of the CITY'S representative.

**ARTICLE 8. ATTACHMENTS, MISCELLANEOUS CLAUSES,  
SCHEDULES, AND SIGNATURES**

It is further mutually agreed:

**A. ATTACHMENTS**

That, the following are attached hereto and adopted herein by reference:

Exhibit A. Scope of Services  
Exhibit B. Hourly Per Diem Rate Schedule of Charges or Salary Cost

In the event of a direct conflict between any attachment and the terms of this agreement, the latter shall prevail over the former.

## **B. MISCELLANEOUS CLAUSES**

**Capacity:** Each Party to this Agreement represents and warrants to the other as follows:

- (1) That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.
- (2) That each has full power and capacity to enter into this Agreement, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.
- (3) That to the extent required, each Party has obtained the necessary approval of its governing body or board and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this Agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the Party.
- (4) That each Party has duly authorized and empowered a representative to execute this Agreement on their respective behalf and the execution of this Agreement by such representative fully and completely binds the Party to the terms and conditions hereof.
- (5) That absent fraud, the execution of this Agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other Party shall be entitled to rely upon the same. To the extent a Party is a partnership, limited liability company or joint venture, the execution of this Agreement by any member thereof shall bind the Party and to the extent that the execution of Agreement is limited to a manager, managing partner or specific member then the person so executing this Agreement is duly authorized to act in such capacity for the Party.
- (6) That each party represents and warrants to the other that there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon this transaction or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this Agreement.
- (7) That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this Agreement.

**Third Party Beneficiaries:** It is the intent of the parties hereto that there shall be no third party beneficiaries to this Agreement.

**Final Integration:** This Agreement, together with any amendments, or Task Order Directives constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.

**Force Majeure:** Neither party to this Agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

**Amendment in Writing:** This Agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

**Binding Effect:** This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns. If any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Captions:** The captions of this Agreement are for convenience and reference only, are not a part of this Agreement, and in no way define, describe, extend, or limit the scope or intent of this Agreement.

**Construction:** This Agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

**Mandatory and Permissive:** "Shall", "will", and "agrees" are mandatory; "may" is permissive.

**Governing Laws:** The laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Agreement.

**Prohibition on Assignment and Delegation:** No party to this Agreement may assign or delegate its interests or obligations hereunder without the written consent of all other parties hereto obtained in advance of any such assignment or delegation. No such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning or delegating party shall in all respects remain liable hereunder irrespective of such assignment or delegation.

**Waiver:** Non enforcement of any provision of this Agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remaining terms and conditions of the Agreement.

**Ownership of Contract Documents:** The Contract Documents, and copies of parts thereof, are furnished and owned by the City. All portions of the Contract Document, and copies of parts thereof, are the instruments of serve for this project. They are not to be used on other work and are to be returned to the City on request at the completion of the work. Any reuse of these materials without specific written verification or adaptation by the City will be at the risk of the user and without liability or legal expense to the City. Such user shall hold the City harmless from any and all damages, including reasonable attorneys' fees, from any and all claims arising from any such reuse. Any such verification and adoption shall entitle the City to further compensation at rates to be agreed upon by the user and the City.

**Fines and Penalties:** The Contractor shall be solely liable for any and all fines or penalties which may be levied by any governmental authority against the Owner and/or Contractor which are related to the Contractor's operations. The Owner shall deduct the amount of the levied fine or penalty from the Contract amount.

**Agreement Date/Counterparts:** The date of this Agreement is intended as and for a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

**Use of Words and Phrases:** The following words and phrases, where used in this document, shall be given the following and respective interpretations: "Herein," "hereby," "hereunder," "hereof," and other equivalent words refer to this document as an entirety and not solely to the particular portion hereof in which any such word is used.

The definitions set forth in any portion of this Agreement unless the text or context indicates differently shall be deemed applicable whether the words defined are herein used in the singular or the plural. Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

**C. COMPLIANCE WITH IMMIGRATION LAW:**

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

**D. COMPLIANCE WITH AFFORDABLE HEALTH CARE ACT:**

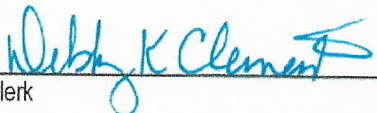
By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal compliance laws pertaining to the Affordable Health Care Act. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same on this the \_\_\_\_\_ day of May, 2020.

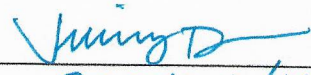
CITY OF TUSCALOOSA, A Municipal Corporation

BY:   
Walter Maddox, Mayor

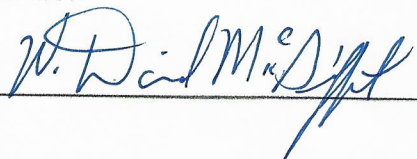
ATTEST:

  
City Clerk

ENGINEER: MCGIFFERT AND ASSOCIATES, LLC

BY:   
ITS: President / Manager

ATTEST:





STATE OF ALABAMA )  
TUSCALOOSA COUNTY )

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Walter Maddox, whose name as Mayor of the City of Tuscaloosa, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 7<sup>th</sup> day of May, 2020.

Stacy Cooper  
Notary Public.

My Commission Expires: 2/17/21  
STATE OF ALABAMA )  
COUNTY OF TUSCALOOSA )

I, Dawn Madison, a Notary Public in and for said State at Large, hereby certify that Jimmy Duncan, who is named as President/Manager, is signed to the foregoing document, and,

- Who is known to me, or
- Whose identity I proved on the basis of \_\_\_\_\_, or
- Whose identity I proved on the oath/affirmation of \_\_\_\_\_, a credible witness to the signer of the above document

and that being informed of the contents of the document, he/she, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 11th day of May, 2020.

Dawn Madison  
Notary Public.

My Commission Expires: 2/10/2021

