

MUNICIPAL MINUTES, CITY OF TUPELO
STATE OF MISSISSIPPI
APRIL 16, 2019

Be it remembered that a regular meeting of the Tupelo City Council was held in the Council Chambers in the City Hall Building on Tuesday, April 16, 2019, at 6:00 p.m., with the following in attendance: Markel Whittington, Lynn Bryan, Travis Beard, Nettie Y. Davis, Buddy Palmer, Mike Bryan, Willie Jennings; City Attorney Ben Logan; Leesha Faulkner, Communications Director, acting as Clerk of the Council in the absence of Amanda Daniel, Clerk of the Council.

Councilman Buddy Palmer gave the invocation, followed by the Pledge of Allegiance by Councilman Mike Bryan.

IN THE MATTER OF CALLING THE MEETING TO ORDER

President Travis Beard called the meeting to order at 6:00 p.m.

IN THE MATTER OF CONFIRMATION OR AMENDMENT OF THE AGENDA AND AGENDA ORDER

Councilman Palmer moved, seconded by Councilman Whittington to confirm the agenda and agenda order. Of those present, the vote was unanimous.

PROCLAMATIONS, RECOGNITIONS AND REPORTS AGENDA

IN THE MATTER OF RECOGNITION OF BOY AND GIRLS SCOUTS

No Boy or Girl Scouts were present at the meeting.

IN THE MATTER OF RECOGNITION OF CITY EMPLOYEES

No City employees were present for recognition of years of service to the City of Tupelo.

IN THE MATTER OF PUBLIC RECOGNITIONS

Councilwoman Nettie Davis noted the family members of the Reverend Robert Jamison, Sr., former church members, and friends who were in attendance to receive a proclamation

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honoring his life and legacy. Ms. Davis called Reverend Jamison “a mentor to many,” and hailed his legacy as a pastor and as a civil rights leader.

Councilman Willie Jennings echoed Ms. Davis’ statements, saying he was pleased to see so many people in attendance to honor him.

IN THE MATTER OF A PROCLAMATION HONORING THE LIFE OF REVEREND ROBERT JAMISON

Mayor Jason Shelton read a proclamation honoring the life of Reverend Robert Jamison and presented the document to the late pastor’s family. A copy of the proclamation is attached to these minutes as **APPENDIX A.**

IN THE MATTER OF A PROCLAMATION CELEBRATING NURSES’ WEEK, MAY 6, 2019 – MAY 12, 2019

Mayor Jason Shelton read a proclamation calling for the celebration of Nurses’ Week, May 6, 2019 – May 12, 2019. A copy of the proclamation is attached to these minutes as **APPENDIX B.**

IN THE MATTER OF THE MAYOR’S REPORT

Mayor Jason Shelton offered the following as his report to the City Council:

The mayor reminded everyone to remember in our thoughts and prayers those affected by the recent tornadoes. Donations of water, canned goods, gift cards, clothes, and other items can be dropped off at city halls in Amory, Aberdeen, and Nettleton from 8 a.m. until 5 p.m. If anyone cannot reach those city halls, items may be dropped off at Tupelo City Hall.

Mayor Shelton spent a good portion of the day leading a tour of City Hall for kindergarten students from First United Methodist Church.

On Monday, Mayor Shelton had the honor of throwing out the first pitch to dedicate our new baseball fields at Ballard Park. Alex Farned, director of Parks and Recreation, works hard with his staff to ensure Tupelo has the best facilities.

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The mayor extended appreciation to Dr. Rob Picou and the Tupelo School District for joining us at the final State of the City meeting last week. The city and district focused on education. The mayor emphasized education as key to economic development and good schools essential to a strong city.

Former Ole Miss All-American, Teneeshia Boyd, will be honored at 2:00 p.m. on Wednesday, April 17th at the Tupelo High School media center for being named an "SEC Legend".

The mayor concluded his report by announcing that all city offices will be closed for Good Friday and re-open on Monday. He wished everyone a Happy and Joyful Easter.

President Beard closed the regular meeting and opened the public agenda portion of the meeting.

PUBLIC AGENDA

PUBLIC HEARINGS

IN THE MATTER OF A HEARING FOR PLANNING COMMITTEE
RECOMMENDATION OF REZONING THE SOUTHERN SECTION OF FEEMSTER
LAKE ROAD (PARCEL 088T-27-052-00) FROM MIXED USE EMPLOYMENT TO
LOW DENSITY RESIDENTIAL

No one attended to speak for or against the Planning Committee recommendation of rezoning the southern section of Feemster Lake Road (Parcel 088T-27-052-00) from mixed use employment (MUE) to low density residential (LDR).

CITIZEN HEARINGS

IN THE MATTER OF JOHN BROWN AND MICHAEL UPTON WITH THE
AMERICAN RED CROSS

Mr. Brown and Mr. Upton could not attend the hearing, but Ms. Cheryl Kocurek spoke for the non-profit organization, seeking support for an upcoming project to provide and install smoke detectors to those in need.

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President Beard closed the public agenda and re-opened the regular meeting.

ACTION AGENDA

IN THE MATTER OF REVIEW, APPROVE, REJECT ORDINANCE REZONING PROPERTY AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF TUPELO, MISSISSIPPI, TO REZONE THE SOUTHERN SECTION OF FEEMSTER LAKE ROAD (PARCEL 088T-27-052-00) FROM MIXED USE EMPLOYMENT TO LOW DENSITY RESIDENTIAL

Based upon the findings and recommendation of the City of Tupelo Planning Committee that the character of the neighborhood had changed to such an extent as to justify rezoning, and that a public need existed for rezoning, Councilman Lynn Bryan moved, seconded by Councilman Mike Bryan, to approve rezoning a parcel of property in the southern area of Feemster Lake Road (Parcel 88T-27-052-00) from mixed use employment to low density residential and amend the official zoning map of the City of Tupelo, Mississippi. The vote was unanimous in favor. A copy of the ordinance is attached to these minutes as **APPENDIX C.**

IN THE MATTER OF REVIEW, APPROVE, REJECT RESOLUTION AUTHORIZING MAYOR TO ENTER INTO OPERATIONS AND MAINTENANCE AGREEMENT BETWEEN CITY OF TUPELO AND NORTHEAST MISSISSIPPI REGIONAL WATER SUPPLY DISTRICT, SUBJECT TO RATIFICATION IN FINAL FORM.

Pursuant to a recommendation by City Attorney Ben Logan, Councilman Whittington moved, seconded by Councilman Jennings, to table the resolution authorizing the Mayor to enter into an operations and maintenance agreement between the City of Tupelo and Northeast Mississippi Regional Water Supply District, subject to ratification in final form. The vote was unanimous in favor to table. **APPENDIX D.**

ROUTINE AGENDA

IN THE MATTER OF REVIEW, APPROVE, REJECT MINUTES OF THE APRIL 2, 2019 REGULAR CITY COUNCIL MEETING

Councilwoman Davis moved, seconded by Councilman Markel Whittington to approve these minutes as submitted. The vote was unanimous in favor. A copy of these minutes is attached as **APPENDIX E.**

N/A

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IN THE MATTER OF REVIEW, APPROVE, REJECT ADVERTISING AND PROMOTIONAL EXPENSE LIST

No items were submitted.

IN THE MATTER OF REVIEW OF PAY BILLS

The bills were reviewed at 4:30 p.m. by council members Davis, Beard, and Jennings.

Councilman Jennings moved, seconded by Councilman Whittington to approve the pay of the checks, bills, and claims. The vote was unanimous in favor.

Pool Cash – Check Numbers 354908-355258

EFT – Check Numbers 50000101-50000116

Electronic Transfers as shown on the face of docket

Invoices as shown on face of docket.

IN THE MATTER OF REVIEW, APPROVE, REJECT REQUEST FROM TUPELO FIRE DEPARTMENT TO SUBMIT THE ATTACHED LIST OF ITEMS TO BE SURPLUSED FOR DISPOSAL

Tupelo Fire Chief Thomas Walker submitted these items as no longer needed by his department, requesting they be declared surplus and sold at an upcoming public auction or otherwise disposed of in accordance with state law. Councilman Palmer moved, seconded by Councilman Whittington, to find the items no longer of use to the city, declared surplus, and sold at public auction. The vote was unanimous in favor. A copy of this request is attached as **APPENDIX F.**

IN THE MATTER OF REVIEW, RATIFY CONTRACT FOR MILL AND OVERLAY BETWEEN THE CITY OF TUPELO AND APAC, MISSISSIPPI, INC. (Bid #1538PW approved March 19, 2019)

Councilman Mike Bryan moved, seconded by Councilman Lynn Bryan to ratify the contract for mill and overlay between the City of Tupelo and APAC, Mississippi, Inc. awarded on March 19, 2019. The vote was unanimous in favor. A copy of the contract is attached to these minutes as **APPENDIX G.**

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**IN THE MATTER OF REVIEW, APPROVE, REJECT CHANGE ORDER FOR
 CONTRACT NO. 1522 WL SRF SEWER FY17 WASTE WATER COLLECTION
 SYSTEM IMPROVEMENT**

Water and Light Director Johnny Timmons presented for approval the change order for contract No. 1522 WL SRF Sewer FY17. The need for the change was discovered during construction of contractual upgrades and involves removing an inside valve on a meter that provides services to Toyota Motor Manufacturing Mississippi, Inc. and replacing said valve with an outside stainless steel valve for the cost of \$18,590. Councilman Whittington moved, seconded by Councilman Jennings to find the additive change order commercially reasonable, not for purposes of circumventing the purchasing laws, and to approve the change order. The vote was unanimous in favor. A copy of the change order is attached to these minutes as

APPENDIX F. E

**IN THE MATTER OF REVIEW, CONFIRM, REJECT APPOINTMENT OF PAT
 FALKNER AS INTERIM DIRECTOR OF DEPARTMENT OF DEVELOPMENT
 SERVICES**

Upon recommendation of Mayor Shelton to appoint Mr. Falkner until at least the close of the budget year and allow the Administration to study the restructure of the department, Councilman Palmer moved, seconded by Councilwoman Davis to approve the appointment of Mr. Falkner as interim director of the Department of Development Services. The vote was unanimous in favor.

**IN THE MATTER OF REVIEW, CONFIRM, REJECT APPOINTMENT OF LEESHA
 FAULKNER AS ACTING CLERK OF COUNCIL**

Councilman Jennings moved, seconded by Councilman Whittington to table the item until after executive session. The vote was 5-2 to table, with Jennings, Whittington, Beard, Mike Bryan, and Davis voting to table the item, and Lynn Bryan and Palmer voting against. Councilman Jennings' motion carried.

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**IN THE MATTER OF REVIEW, APPROVE, REJECT RESOLUTION AUTHORIZING
MAYOR TO ENTER INTO MEMORANDUM OF UNDERSTANDING BETWEEN THE
CITY OF TUPELO AND THE TUPELO PUBLIC SCHOOL DISTRICT REGARDING
HEALTHY HEROES PROGRAM**

Upon recommendation of Parks and Recreation Director Alex Farned, Councilman Palmer moved, seconded by Councilman Mike Bryan to approve and authorize the Mayor to enter into a memorandum of understanding between the City of Tupelo and the Tupelo Public School District regarding the "Healthy Heroes Program". The vote was unanimous in favor. A copy of the memorandum of understanding is attached to these minutes as **APPENDIX H**.

**IN THE MATTER OF REVIEW, APPROVE, REJECT ORDER CANCELING LETTER
OF CREDIT FOR TUPELO CROSSROADS, LLC**

Councilman Whittington moved, seconded by Councilman Mike Bryan to approve the order canceling a letter of credit for Tupelo Crossroads, LLC. The vote to approve was unanimous. The order is attached to these minutes as **APPENDIX I**.

STUDY AGENDA

**IN THE MATTER OF REVIEW, APPROVE, REJECT ORDINANCE AMENDING
CODE OF ORDINANCES, CHAPTER 23.5: SOLID WASTE COLLECTION,
REMOVAL, AND DISPOSAL**

Upon the recommendation of City Attorney Ben Logan to suspend the rules and move the item to the action agenda for a vote, Councilman Whittington moved, seconded by Councilman Mike Bryan to move the item to the April 16, 2019, Action Agenda and consider it immediately. The vote was unanimous in favor.

Councilman Whittington moved, seconded by Councilwoman Davis to approve the ordinance amending the Code of Ordinance, Chapter 23.5: Solid Waste Collection, Removal, and Disposal. The vote was unanimous in favor. A copy of the amended code is attached to these minutes as **APPENDIX J**.

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IN THE MATTER OF REVIEW, APPROVE, REJECT RESOLUTION GRANTING AD VALOREM TAX EXEMPTION TO COOPER TIRE & RUBBER COMPANY

Councilwoman Davis moved, seconded by Councilman Lynn Bryan to move this item up to the May 7, 2019, Action Agenda. The vote was unanimous in favor.

IN THE MATTER OF REVIEW, APPROVE, REJECT RESOLUTION AUTHORIZING MAYOR TO ENTER INTO AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING BETWEEN TUPELO PUBLIC SCHOOL DISTRICT AND TUPELO POLICE DEPARTMENT REGARDING SCHOOL RESOURCE OFFICER PROGRAM

Councilman Whittington moved, seconded by Councilman Jennings to move this item up to the May 7, 2019, Action Agenda. The vote was unanimous in favor.

EXECUTIVE SESSION

IN THE MATTER OF EXECUTIVE SESSION

Councilman Mike Bryan moved, seconded by Councilwoman Nettie Davis to determine the need for executive session. The vote was unanimous to determine the need. City Attorney Ben Logan advised that the topic for discussion was personnel, and that said subject was a proper topic for executive session.

Councilman Jennings moved, seconded by Councilman Whittington to enter executive session. That vote was unanimous in favor, and the meeting was closed at 6:28 p.m.

Those allowed in the session were Whittington, Jennings, Palmer, Mike Bryan, Beard, Davis, Lynn Bryan, City Attorney Ben Logan, and Human Resources Director Cassandra Moore.

After a discussion in executive session, Councilman Palmer, seconded by Councilman Whittington moved to come out, and the motion carried unanimously to return to regular session.

Regular session resumed at 6:47 p.m.

Upon return to regular session, Councilman Bryan moved, seconded by Councilman Palmer, to take from the table THE MATTER OF REVIEW, CONFIRM, REJECT APPOINTMENT OF

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LEESHA FAULKNER AS ACTING CLERK OF COUNCIL. The motion carried unanimously to take this item from the table.

THE MATTER OF REVIEW, CONFIRM, REJECT APPOINTMENT OF LEESHA FAULKNER AS ACTING CLERK OF COUNCIL

Councilman Bryan moved, seconded by Councilman Whittington, to appoint Leesha Faulkner as acting council clerk. The vote was unanimous in favor.

IN THE MATTER OF ADJOURNMENT


Councilman Whittington moved, seconded by Councilman Lynn Bryan, to adjourn. The vote was unanimous in favor, and the meeting adjourned at 6:49 p.m.



TRAVIS BEARD, PRESIDENT

ATTEST:



CLERK OF THE COUNCIL

MAYOR

DATE

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DOCUMENTS NOT AVAILABLE

APPENDIX A

APPENDIX B

(VARIOUS PROCLAMATIONS)

4-16-19
6.1

MEMO

TO: Mayor, City Council members

FROM: Pat Falkner

DATE: April 8, 2019

RE: Action agenda item: Planning Committee recommendation of rezoning on Feemster Lake Road

The Planning Committee voted March 4 to recommend approval of changing the zoning of the southern section of Parcel 088T-27-052-00 on Feemster Lake Road from Mixed Use Employment to Low Density Residential District.

The ordinance amending the zoning map is attached.

placeholder

c

**ORDINANCE REZONING PROPERTY AND AMENDING THE OFFICIAL ZONING
MAP OF THE CITY OF TUPELO, MISSISSIPPI**

Case No. RZ19-01

Parcel #: 088T-27-052-00

WHEREAS, a request was filed with the Department of Planning and Community Development to change the zoning on certain pieces of property; and,

WHEREAS, the request was reviewed by the Tupelo Planning Committee which reviewed and considered information regarding the rezoning and conducted a public hearing with notice sent to the surrounding property owners, at the Planning Committee's regularly scheduled meeting on Monday, March 4, 2019. The Planning Committee recommended approval of the proposed zoning change; and,

WHEREAS, the Tupelo City Council conducted a public hearing, with notice published in the Northeast Mississippi Daily Journal, at its regularly scheduled meeting on Tuesday, April 16, 2019, to review and consider recommendations proposed by the Tupelo Planning Committee concerning the proposed zoning change at which time no sufficient protest was received; and,

WHEREAS, the City Council finds and determines that pursuant to the authority granted under Miss. Code Anno. Sec. 17-1-3 (1972 as amended), it is necessary to protect the public

health, safety, morals and general welfare to amend the current Development Code, and the provisions below are to correct a mistake in the original zoning, are consistent with the Comprehensive Plan of the City of Tupelo, are enacted pursuant to the procedures set forth in the Development Code of the City of Tupelo, and are necessary, fair and reasonable.

NOW, THEREFORE, BE IT ORDAINED by the Tupelo City Council as follows:

1. The prefatory sentences, as findings of the City Council are hereby incorporated herein.
2. The portions of the following described property which are currently zoned MUE, Mixed Use Employment, are hereby amended to be zoned LDR, Low Density Residential:

Part of the Southeast Quarter of Section 27, Township 9 South, Range 6 East, City of Tupelo, described as follows.

Commencing at the Northwest Corner of said Southeast Quarter and run thence South 0 Degrees 7 Minutes East 1188.0 feet; thence East 826.11 feet; thence North 540.28 feet to the center of Feemster Lake Road; thence North 61 Degrees 55 Minutes 10 Seconds East with said centerline 191.46 feet; thence North 70 Degrees 20 Minutes East with said centerline 677.57 feet; thence North 69 Degrees 05 Minutes 19 Seconds East 12.08 feet to a cotton spindle in said centerline; thence South 605.85 feet; thence South 34 Degrees 18 Minutes 57 Seconds East 284.21 feet to the point of beginning. Run thence North 86 Degrees 12 Minutes 8 Seconds East 694.45 feet; thence South 76 Degrees 27 Minutes 5 Seconds East 129.25 feet; thence South 0 Degrees 41 Minutes 40 Seconds East 922.36 feet; thence South 89 Degrees 18 Minutes 53 Seconds West 829.82 feet; thence North 916.50 feet to the point of beginning.

All lying and being in the Southeast Quarter of Section 27, Township 9 South, Range 6 East, Lee County, Mississippi and containing 17.7 acres.

3. The official Zoning Map shall be amended to reflect this change. The City Clerk shall cause this amendatory ordinance to be published according to law.

C

The foregoing Ordinance was proposed in a motion by Councilman _____, seconded by Councilman _____, and was brought to a vote as follows:

_____ Councilman Markel Whittington
_____ Councilman Lynn Bryan
_____ Councilman Travis Beard
_____ Councilman Nettie Davis
_____ Councilman Buddy Palmer
_____ Councilman Mike Bryan
_____ Councilman Willie Jennings

Whereupon, the ordinance having received a majority of affirmative votes, the President of the Council declared that the Ordinance had been passed and adopted on this the 16th day of April, 2019.

CITY OF TUPELO, MISSISSIPPI

BY: _____
Travis Beard, President

ATTEST:

AMANDA DANIEL, Clerk of the Council

APPROVED:

Jason L. Shelton, Mayor

DATE: April 16, 2018

C

DOCUMENTS NOT AVAILABLE
APPENDIX D
PLACEHOLDER



City of Tupelo

Jason L. Shelton

Mayor

Water and Light

Johnny Timmons, Director

April 11, 2019

COUNCIL

Markel Whittington
Ward One

Lynn Bryan
Ward Two

Travis Beard
Ward Three

Nettie Y. Davis
Ward Four

Buddy Palmer
Ward Five

Mike Bryan
Ward Six

Willie Jennings
Ward Seven

Mayor Jason Shelton and Council of the City of Tupelo
City of Tupelo
Tupelo, Mississippi 38804

Dear Mayor Shelton and Council Members:

The following change order is submitted for approval at your regular meeting on Tuesday, April 16, 2019:

Tupelo SRF FY17 Wastewater Collection System Improvements – Change Order No. 1 – This change order adds a 14" gate valve downstream of the work area at the Southwest Pump Station (Site D) to provide future flexibility during maintenance operations. The downtime of the station during the ongoing project presents an ideal opportunity to perform this work. It will allow the operator to isolate the Southwest Pump Station and PUL Pump Station that share a common force main. This change order will add \$18,590.00, which brings the total project cost to \$2,103,590.00.

I have reviewed this change order and find it to be correct. If you have any questions, please feel free to call upon me.

Sincerely,

Johnny N. Timmons

Johnny N. Timmons
Manager

Attachment

E

Change Order No. 1

Date of Issuance: April 11, 2019	Effective Date: April 11, 2019
Owner: City of Tupelo	Owner's Contract No.: 1522WL
Contractor: KAJACS Contractors	Contractor's Project No.:
Engineer: Cook Coggin Engineers, Inc.	Engineer's Project No.: CCE 3-09325-16M
Project: SRF Sewer FY17	Contract Name: WW Collection Imp.

The Contract is modified as follows upon execution of this Change Order:

Add an in-line 14" gate valve downstream of work at Southwest Pump Station. This valve will create a method of isolating the Southwest Pump Station from the PUL Pump Station for future maintenance purposes. Downtime during this project is ideal time to perform work.

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price:	Original Contract Times: 300 days
\$ 2,085,000.00	Substantial Completion: December 15, 2019
	Ready for Final Payment: December 15, 2019
	days or dates
[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___:	[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___:
\$ NA	Substantial Completion: NA
	Ready for Final Payment: NA
	days
Contract Price prior to this Change Order:	Contract Times prior to this Change Order:
\$ 2,085,000.00	Substantial Completion: Same
	Ready for Final Payment: Same
	days or dates
Increase of this Change Order:	[Increase] of this Change Order:
\$ 18,590.00	Substantial Completion: NA
	Ready for Final Payment: NA
	days or dates
Contract Price Incorporating this Change Order:	Contract Times with all approved Change Orders:
\$ 2,103,590.00	Substantial Completion: December 15, 2019
	Ready for Final Payment: December 15, 2019
	days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: <u>[Signature]</u>	By: <u>[Signature]</u>	By: <u>[Signature]</u>
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Title: Project Engineer	Title: Mayor	Title: VICE PRESIDENT
Date: 04/11/2019	Date: 4-17-19	Date: 4/11/19

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____

EJCDC® C-941, Change Order.

Prepared and published 2013 by the Engineers Joint Contract Documents Committee.

Page 1 of 1

E

Memorandum

To: Mayor Shelton and City Council Members
From: Thomas Walker
Date: April 2, 2019
Re: Surplus property

I respectfully request that the following items be placed in surplus for disposal.

Property Tag # 11732	Camera Kodak	obsolete
Property Tag # 12018	GammaRae Detector	obsolete
Property Tag # 12021	GammaRae Detector	obsolete
Property Tag # 12031	GammaRae Detector	obsolete
Property Tag # 12050	GammaRae Detector	obsolete
Property Tag # 11687	20' Monitor	unrepairable
Property Tag # 14078	Computer LVO	obsolete
Property Tag # 12069	Projector Epson	repairs exceed value
Property Tag # 12070	Projector Epson	repairs exceed value
Property Tag # 12058	FireTrax System	obsolete
Property Tag # 12059	FireTrax System	obsolete
Property Tag # 12060	FireTrax System	obsolete
Property Tag # 12061	FireTrax System	obsolete
Property Tag # 12062	FireTrax System	obsolete
Property Tag # 12063	FireTrax System	obsolete
Property Tag # 11755	Infrared Heat Sensor	obsolete
Property Tag # 12111	Camera thermal	repairs exceed value

F

CONTRACT

THIS AGREEMENT, made this the _____ day of _____, 2019, by and between the CITY OF TUPELO, MISSISSIPPI, hereinafter called "OWNER" and APAC-Mississippi, Inc., doing business as (an Individual), (a partnership), (a Corporation), or (a Limited Liability Company) hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of **ROADWAY MILL & OVERLAY PROGRAM – 2019 ANNUAL BID** hereinafter called "PROJECT".
2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.
3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within 10 calendar days after the date of the NOTICE TO PROCEED and will complete the Project within 365 calendar days, unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.
4. The CONTRACTOR agrees to perform all of the work described in the CONTRACT DOCUMENTS, and comply with the terms therein for the sum of \$ 2,669,500.00 or as shown in the BID Schedule.
5. The term "CONTRACT DOCUMENTS" means and include the following:
 - (a) This Agreement
 - (b) Advertisement for Bids
 - (c) Instruction to Bidders
 - (d) Scope of Work
 - (e) Signed Copy of Proposal Form and Bidder's Certificate
 - (f) Executed Non-Collusion Form and Compliance Statements

- (g) Executed Performance Bond
 - (h) Executed Payment Bond
 - (i) Technical Specifications
 - (j) SPECIFICATIONS prepared/issued by **Dabbs Corporation** dated **DECEMBER, 2018**.
 - (k) ADDENDA:
No. ___ Dated _____ and No. ___ Dated _____.
 - (l) All federal government conditions, specifications, regulations and requirements bound herein.
6. The Contractor agrees to abide by the following consequences for failure to complete the project within the time specified in the Contract Documents:
- A. LIQUIDATED DAMAGES - CONTRACTOR shall pay to OWNER for each and every calendar day that he shall be in default in attaining Completion of the Work of an individual work order the sum of \$ 200.00 as liquidated damages. The CONTRACTOR shall be liable for the continued assessment of liquidated damages of \$ 200.00 for each calendar day that he shall be in default in completing the Work. Since the OWNER's losses are due to the CONTRACTOR's delay and are not readily ascertainable, the amount provided herein for liquidated damages constitutes agreed damages and not a penalty.
 - B. INDEMNIFICATION - In addition to payment of the above liquidated damages, CONTRACTOR s shall fully indemnify and hold harmless the OWNER, the ENGINEER and their officers, personnel, and agents from and against: (1) any and all fines, civil penalties, and assessments levied by the State of Mississippi Office of Pollution Control, State of Mississippi Bureau of Environmental Health or any federal or state court for failure to meet, perform, or comply with any part of the time schedule as defined in the Contract Documents, and (2) any and all claims, damages, losses, expenses, liabilities, actions, judgments, and decrees of any and every nature whatsoever in any manner caused by, resulting from, or arising out of such failure.
 - C. RIGHT OF SET-OFF - The OWNER, in addition to its other remedies under this Contract and in law and in equity, may deduct from monies which become due the

CONTRACTOR under this Contract any unpaid amounts which become to or for the OWNER under any of the foregoing provisions.

7. The OWNER will pay to the CONTRACTOR in the manner and at such times set forth in the General Conditions such amount as required by the CONTRACT DOCUMENTS. The OWNER shall retain ten percent (10%) of the amount of each payment until final completion and acceptance of all work covered by the CONTRACT DOCUMENTS unless otherwise mutually agreed.
8. The Contractor agrees to allow the Owner or a duly authorized representatives thereof, access to books, documents, papers and records of the Contractor which are directly pertinent to the project which is the subject of this Contract, for the purpose of making audits, examinations, excerpts and transcriptions, and Contractor agrees to insert an identical access to records clause into all subcontracts.
9. The Contractor shall be held responsible for forfeiture of monies in the event that an audit indicates his failure to keep adequate records, including change orders, force accounts and payroll records.
10. Attached hereto and made a part of this Contract is a Payment Bond, executed by a Surety Company doing business in the State of Mississippi, in the sum of:
(\$ 2,669,500.00) 100%
(not less than one hundred percent of Contract amount)
11. Attached hereto and made a part of this Contract is a Performance Bond, executed by a Surety Company doing business in the State of Mississippi, in the sum of:
(\$ 2,669,500.00) 100%
(not less than one hundred percent of Contract amount)

G

12. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement in 5 copies each of which shall be deemed an original on the date first above written.

City of Tupelo, Mississippi

BY: _____

NAME: _____

TITLE: Mayor

ATTEST:

BY: _____

NAME: _____

TITLE: City Clerk

(SEAL)

Contractor

BY: _____

NAME: _____

Title _____

ATTEST:

BY: _____

NAME: _____

TITLE: _____



END OF SECTION

G

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("this MOU") is by and between the *City of Tupelo*, hereinafter referred to as the "City," and the *Tupelo Public School District*, hereinafter referred to as the "School District," both of which are organized and existing under the laws of the State of Mississippi and located in Lee County.

The following premises apply:

1. The School District agrees to permit the City to implement the Healthy Heroes Program for the 2019-2020 school year at the following elementary schools: *Carver Elementary School, Joyner Elementary School, Lawhon Elementary School, Parkway Elementary School, Thomas Street Elementary School, Lawndale Elementary School, Pierce Street Elementary School, and Rankin Elementary School*. The City will provide events and activities at the elementary schools, including: *Healthy Nutrition Lessons, Physical Fitness Activities, and School Walks offered during the months of August 2019-May 2020*, as more specifically outlined on the attached Exhibit A.
2. The City agrees to notify and schedule the Healthy Heroes Program events and activities listed above with the School District in advance of the events and activities being held. All costs associated with the Healthy Heroes Program will be paid by the City.

General Understandings of the Parties:

1. This Memorandum of Understanding shall be construed under the laws of the State of Mississippi (without regard to conflict of law principals). The parties consent to the jurisdiction and venue of the Federal and State Courts of the Southern District of Mississippi.
2. Nothing in this Memorandum of Understanding is intended or shall be deemed to constitute a partnership, agency, employer-employee, or a joint venture relationship between the City and the School District. Neither party shall incur any liabilities nor any obligation of any kind (express or implied) for the other, except to the extent, if at all, specifically provided herein.
3. This Memorandum of Understanding may be amended or modified only by an instrument in writing duly executed by the parties hereto.
4. This Memorandum of Understanding shall not be delegated or assigned by either party without prior written consent of the other party.
5. In no event shall either party be liable to one another for any indirect, special, incidental, punitive or consequential damages to the extent permitted by Mississippi law.

In witness hereof, the parties have caused this Memorandum of Understanding to be executed by these respective officers who have been duly authorized to execute this Memorandum of Understanding.

City of Tupelo

By: _____
Title: _____
Date: _____

Tupelo Public School District

By: Robert J. Pison
Title: Superintendent
Date: 3/19/19

Exhibit A

Lessons

- Teach a healthy eating lesson using the nutrition materials provided by the Blue Cross & Blue Shield of Mississippi Foundation at the Blue Cross & Blue Shield of Mississippi Foundation Healthy Heroes Training Conference at no cost;
- Teach a physical fitness lesson that includes exercise activities based on the training received at the Blue Cross & Blue Shield of Mississippi Foundation Healthy Heroes Training Conference;
- The Healthy Heroes lessons are to be taught during regularly scheduled P.E. classes where students have room to exercise (push-ups, jumping jacks, arms circles, etc.) without chairs or other objects that would obstruct activity. The school gym, open outside green space, and outside patios or concreted areas on the school property are suggested locations for teaching Healthy Heroes lessons and activities.

Visits

- The "Healthy Heroes," whether uniformed police officers or uniformed firefighters, will make a minimum of one visit in each school month during the grant term using only the materials provided by the Blue Cross & Blue Shield of Mississippi Foundation. School months are: August, September, October, November, December, January, February, March, April, and May.
- One day with one or more P.E. classes is considered to be one visit. More than one visit per school month may be made; however, the visits must be evenly distributed over the course of the grant period.

ORDER

**ORDER RELEASING AND CANCELLING LETTER OF
CREDIT OF TUPELO CROSSROADS, LLC**

WHEREAS, Tupelo Crossroads, LLC entered into a development agreement with the city on March 15, 2016; and

WHEREAS, the development agreement as approved by the city council contained requirements for security in the amount of \$100,000, binding the developer to making certain improvements to the property; and

WHEREAS, the developer pledged the attached Promissory Note/Irrevocable Standby Letter of Credit; and

WHEREAS, the improvements have been made and the other conditions of the development agreement have been met; and

WHEREAS, the original of the security agreement cannot be located, and the financial institution issuing the letter of credit has requested official action of the city council to release and cancel the obligations thereunder enuring to the city.

NOW, THEREFORE, IT IS ORDERED by the City of Tupelo City Council that the obligations of the developer to the city secured by the attached Promissory Note have been met, and same are hereby released and cancelled.

Councilmember Whittington moved, seconded by Councilmember Mike Bryan, to approve the Order, and after a discussion of the matter, the vote was as follows:

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04/16/19

7.10

Councilman Whittington	<u>Aye</u>
Councilman L. Bryan	<u>Aye</u>
Councilman Beard	<u>Aye</u>
Councilwoman Davis	<u>Aye</u>
Councilman Palmer	<u>Aye</u>
Councilman M. Bryan	<u>Aye</u>
Councilman Jennings	<u>Aye</u>

The motion having received the foregoing vote of the City Council, the president declared the motion carried and the Resolution adopted on this, the 16th day of April, 2019.

CITY OF TUPELO, MISSISSIPPI


TRAVIS BEARD
Council President

ATTEST



ACTING COUNCIL CLERK

APPROVED:



JASON SHELTON, MAYOR

4-17-19
DATE

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Borrower: TUPELO CROSSROADS, LLC
431 WEST MAIN STREET SUITE 108
TUPELO, MS 38804

Lender: BankPlus
Tupelo
108 North Broadway
Tupelo, MS 38804
(662) 407-2587

Principal Amount: \$100,000.00

Date of Note: April 15, 2016

PROMISE TO PAY. TUPELO CROSSROADS, LLC ("Borrower") promises to pay to BankPlus ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Hundred Thousand & 00/100 Dollars (\$100,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance, calculated as described in the "INTEREST CALCULATION METHOD" paragraph using an interest rate of 6.000% per annum based on a year of 360 days. Interest shall be calculated from the date of each advance until repayment of each advance. The interest rate may change under the terms and conditions of the "INTEREST AFTER DEFAULT" section.

PAYMENT. Borrower will pay this loan in full immediately upon Lender's demand. If no demand is made, Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on April 15, 2017. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; and then to principal. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

INTEREST CALCULATION METHOD. Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

PREPAYMENT; MINIMUM INTEREST CHARGE. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. In any event, even upon full prepayment of this Note, Borrower understands that Lender is entitled to a minimum interest charge of \$20.00. Other than Borrower's obligation to pay any minimum interest charge, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: BankPlus, Tupelo, 108 North Broadway, Tupelo, MS 38804.

LATE CHARGE. If a payment is 16 days or more late, Borrower will be charged 4.000% of the regularly scheduled payment or \$5.00, whichever is greater. However, in no event will the late charge exceed \$50.00.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased by 5.000 percentage points. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment, is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after Lender sends written notice to Borrower demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

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PROMISSORY NOTE (Continued)

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Mississippi without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Mississippi.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of MADISON County, State of Mississippi.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the debt against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Note is secured by UNSECURED.

LINE OF CREDIT. This Note evidences a straight line of credit. Once the total amount of principal has been advanced, Borrower is not entitled to further loan advances. Advances under this Note, as well as directions for payment from Borrower's accounts, may be requested orally or in writing by Borrower or by an authorized person. Lender may, but need not, require that all oral requests be confirmed in writing. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs. Lender will have no obligation to advance funds under this Note if: (A) Borrower or any guarantor is in default under the terms of this Note or any agreement that Borrower or any guarantor has with Lender, including any agreement made in connection with the signing of this Note; (B) Borrower or any guarantor ceases doing business or is insolvent; (C) any guarantor seeks, claims or otherwise attempts to limit, modify or revoke such guarantor's guarantee of this Note or any other loan with Lender; (D) Borrower has applied funds provided pursuant to this Note for purposes other than those authorized by Lender; or (E) Lender in good faith believes itself insecure.

ARBITRATION. Borrower and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Note or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any collateral securing this Note shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any collateral securing this Note, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral securing this Note, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Note shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

AUTOMATIC RENEWAL CLAUSE FOR LETTERS OF CREDIT. The Expiration Date of this Irrevocable Standby Letter of Credit shall automatically be extended for one (1) year from the Expiration Date and likewise for one (1) year from any such extended expiration date, unless not less than 60 days prior to the Expiration Date or any such extended expiration date we shall notify you in writing that we have elected not to extend or further extend the expiration date of this Irrevocable Letter of Credit. Said notices to further extend the expiration date shall be sent by us to: **THE CITY OF TUPELO, MS P.O. BOX 1485 TUPELO, MS 38802.**

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. This Note is payable on demand. The inclusion of specific default provisions or rights of Lender shall not preclude Lender's right to declare payment of this Note on its demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

TUPELO CROSSROADS, LLC

By: COPY
WILLIE F WATERER JR, Member of TUPELO
CROSSROADS, LLC

By: COPY
JUSTIN W DAVIS, Member of TUPELO
CROSSROADS, LLC