


SUBMIT BIDS TO:	CITY OF TUSCALOOSA P.O. BOX 2089 TUSCALOOSA, AL 35403	PURCHASING OFFICE 2201 UNIV. BLVD. TUSCALOOSA, AL 35401	<b>INVITATION TO BID</b>								
BID TITLE <b>UTILITY LINE LOCATION SERVICES</b>			BID NO. 9072-091118--1								
PAGE 1 OF <u>7</u> PAGES	<b>BIDS WILL BE OPENED AT 2:00 PM ON SEPTEMBER 11, 2018 IN THE OFFICE OF THE PURCHASING AGENT, 2201 UNIVERSITY BLVD. TUSCALOOSA, AL 35401 AND MAY NOT BE WITHDRAWN FOR <u>THIRTY (30)</u> DAYS AFTER SUCH DATE &amp; TIME.</b>		ISSUE DATE 08/27/2018								
 <p style="text-align: center;"><u>MAYOR</u> <b>WALTER MADDOX</b></p> <p style="text-align: center;"><u>COUNCIL MEMBERS</u></p> <table border="0" style="width: 100%;"> <tr> <td>PHYLLIS W. ODOM</td> <td>MATTHEW CALDERONE</td> </tr> <tr> <td>RAEVAN HOWARD</td> <td>KIP TYNER</td> </tr> <tr> <td>CYNTHIA LEE ALMOND</td> <td>EDDIE PUGH</td> </tr> <tr> <td>SONYA MCKINSTRY</td> <td></td> </tr> </table> <p style="text-align: center;"><u>PURCHASING AGENT</u> <b>DAVID COGGINS</b></p>		PHYLLIS W. ODOM	MATTHEW CALDERONE	RAEVAN HOWARD	KIP TYNER	CYNTHIA LEE ALMOND	EDDIE PUGH	SONYA MCKINSTRY		<b>Vendor Information</b> (SECTION TO BE COMPLETED BY VENDOR) <hr/> Company Name (Please Print) _____ <hr/> Phone Number _____ Fax Number _____ <hr/> Email Address _____	
PHYLLIS W. ODOM	MATTHEW CALDERONE										
RAEVAN HOWARD	KIP TYNER										
CYNTHIA LEE ALMOND	EDDIE PUGH										
SONYA MCKINSTRY											

GENERAL CONDITIONS OF INVITATIONS TO BID

**1. PREPARATION OF BIDS**

Bids will be prepared in accordance with the following:

- (a) Our enclosed Bid forms are to be used in submitting your bid.
- (b) All information required by the Bid form shall be furnished. The bidder shall print or type his name and manually sign the schedule and each continuation sheet on which any entry is made.
- (c) Unit prices shall be shown and where there is an error in extension of price, the unit price shall govern.
- (d) Proposed delivery time must be shown and shall include Sundays and holidays.
- (e) Bidder will not include federal taxes nor State of Alabama sales, excise, and use taxes in bid prices as the City is exempt from payment of such taxes. An exemption certificate will be signed where applicable upon request.
- (f) Bidders shall thoroughly examine the drawings, specifications, schedule, instructions and all other contract documents.
- (g) Bidders shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of material and equipment as required by the bid conditions. No plea of ignorance by the bidder of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the bidder to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the vendor.
- (h) Bidders are advised that all City Contracts are subject to all legal requirements provided for in the Purchasing ordinance and/or State and Federal Statutes.

**2. DESCRIPTION OF SUPPLIES**

- (a) Any manufacturer's names, trade names, brand name, or catalog numbers used in specifications are for the purpose of describing and establishing general quality levels. SUCH REFERENCES ARE NOT INTENDED TO BE RESTRICTIVE. Bids will be considered for any brand which meets the quality of the specifications listed for any items.
- (b) Bidders are required to state exactly what they intend to furnish, otherwise they shall be required to furnish the items as specified.
- (c) Bidders will submit, with their proposal, data necessary to evaluate and determine the quality of the item(s) they are bidding.

**3. SUBMISSION OF BIDS**

- (a) Bids and changes thereto shall be enclosed in sealed envelopes addressed to David Coggins, Purchasing Agent, 2201 University Blvd., Tuscaloosa, Alabama 35401. The name and address of the bidder, the date and hour of the bid opening and the material or service bid on shall be placed on the outside of the envelope.
- (b) Bids must be submitted on the forms furnished. Telegraphic bids will not be considered.

**4. REJECTION OF BIDS**

- (a) The City may reject a bid if:
  - 1. The bidder misstates or conceals any material fact in the bid, or if,
  - 2. The bid does not strictly conform to the law or requirement of bid, or if,
  - 3. The bid is conditional, except that the bidder may qualify his bid for acceptance by the City on an "all or none" basis, or a "low item" basis. An "all or none" basis bid must include all items upon which bids are invited.
- (b) The City may, however, reject all bids whenever it is deemed in the best interest of the City. The City may also waive any minor informalities or irregularities in any bid.

**5. WITHDRAWAL OF BIDS**

- (a) Bids may not be withdrawn after the time set for the bid opening for a period of time as specified.
- (b) Bids may be withdrawn prior to the time set for the bid opening.
- 6. LATE BIDS OR MODIFICATIONS**
- (a) Bids and modifications received after the time set for the bid opening will not be considered.
- (b) Modifications in writing received prior to the time set for the bid opening will be accepted.
- 7. CLARIFICATIONS OR OBJECTION TO BID SPECIFICATIONS**
- If any person contemplating submitting a bid for this contract is in doubt as to the true meaning of the specifications or other bid documents of any part thereof, he may submit to the Purchasing Agent on or before five (5) days prior to scheduled opening a request for clarification. All such requests for information shall be made in writing and the person submitting the request will be responsible for its prompt delivery. Any objection to the specifications and requirements as set forth in this bid must be filed in writing with the Purchasing Agent on or before five (5) days prior to scheduled opening.
- 8. DISCOUNTS**
- (a) Bidders may offer a cash discount for prompt payment; however, such discounts shall NOT be considered in determining the lowest net cost for bid evaluation purposes. Bidders are encouraged to reflect cash discounts in the unit prices quoted.
- (b) In connection with any discount offered, time will be computed from the date of receipt of supplies or services or from the date a correct invoice is received, whichever is the later date. Payment is deemed to be made on the date of mailing of the check.
- 9. SAMPLES**
- Samples, when required, must be submitted within the time specified at no expense to the City of Tuscaloosa. If not destroyed or used up during testing, samples will be returned upon request at the bidder's expense, unless stated otherwise in Special Conditions or Specifications. Each individual sample must be labeled with bidder's name and manufacturer's brand name and number.
- 10. AWARD OF CONTRACT**
- (a) The contract will be awarded to the lowest responsible bidder based upon the following factors: quality; conformity with specifications; purpose for which required; terms of delivery; transportation charges; dates of delivery.
- (b) The city reserves the right to accept and award item by item, and/or by group, or in the aggregate, unless the bidder qualifies his bid by specified limitations. Re Par.4(a)3.
- (c) If two or more bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder.
- (d) Prices quoted must be FOB Destination to Tuscaloosa with all transportation charges prepaid unless otherwise specified in the Invitation to Bid.
- (e) A written award of acceptance (Purchase Order), mailed or otherwise furnished to the successful bidder shall result in a binding contract.
- 11. DELIVERY**
- (a) Deliveries are to be FOB Destination unless otherwise specified in the Invitation to Bids.
- (b) Deliveries are to be made during regular business hours.
- 12. CONDITION OF MATERIALS AND PACKAGING**
- All items furnished must be new and free from defects. No others will be accepted under the terms and intent of this bid. All containers shall be new and suitable for storage or shipment, and price bid shall include standard commercial packaging.
- 13. CLAIMS**
- Successful bidder(s) will be responsible for making any and all claims against carriers for missing or damaged items.
- 14. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**
- Bidders shall comply with all local, state, and federal directives, orders and laws as applicable to this bid and subsequent contract(s).
- 15. PROVISION FOR OTHER AGENCIES**
- Unless otherwise stipulated by the bidder, the bidder agrees when submitting his bid to make available to all City agencies, departments, and in-city municipalities the bid prices he submits, in accordance with the bid terms and conditions, should any said department, agency, or municipality wish to buy under this proposal.
- 16. COLLUSION**
- The bidder, by affixing his signature to this proposal, agrees to the following: "Bidder certifies that his bid is made without previous understanding, agreement, or connection with any person, firm, or corporation making a bid for the same items and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action".
- 17. VARIANCE IN CONDITIONS**
- Any and all special conditions and specifications attached hereto which vary from General Conditions shall have precedence.
- 18. MINORITY / DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**
- The City of Tuscaloosa has voluntarily adopted a Minority / Disadvantaged Business Enterprise ("MBE/DBE/WBE") Program called Tuscaloosa Builds, which is designed to encourage the participation and development of minority and disadvantaged business enterprises and to promote equal business opportunities to the fullest extent allowed by state and federal law. To learn more about this program, visit the City's website at [www.tuscaloosa.com](http://www.tuscaloosa.com).

## SPECIAL CONDITIONS

The General Conditions of Invitations to Bid and any Special Conditions stated shall be considered as part of the specifications of the bid.

Reference to brand names and numbers is descriptive, but not restrictive, unless otherwise specified. Bids on equivalent items meeting the standards of quality thereby indicated will be considered, providing the bid clearly describes the article offered and indicates how it differs from the referenced brands. Descriptive literature and manufacturer's specifications plus any supplemental information necessary for comparison purposes must be submitted with the bid or the bid on that item will be rejected. Reference to literature submitted with a previous bid or on file with the Division of Purchasing will not satisfy this requirement. The burden is on the bidder to demonstrate that the item bid is equivalent to the item specified in the ITB. Any exceptions taken to any item(s) must be fully explained in written detail on bidders' letterhead and attached to the bid when submitted.

Awards shall be made or contracts entered into with the lowest responsible bidder(s) meeting all specifications and terms and conditions established by the Division of Purchasing. The Division of Purchasing reserves the right to determine the lowest responsible bidder on the basis of an individual item or group of items. Delivery dates may be a factor in awards.

The issuance of a City of Tuscaloosa Purchase Order or Purchasing Card is required to constitute a contract between the vendor and the City of Tuscaloosa, which shall bind the vendor to furnish and deliver the commodities and/or services ordered at the prices, terms, and conditions quoted.

Questions concerning the bid process should be directed to David Coggins at (205) 248-5186 or [dcoggins@tuscaloosa.com](mailto:dcoggins@tuscaloosa.com) (e-mail is preferred). Questions concerning Specifications should be directed to Cory Sudduth at (205) 248-5927 or [csudduth@tuscaloosa.com](mailto:csudduth@tuscaloosa.com).

Any addendums issued for this bid will be posted on the City Of Tuscaloosa website at <http://www.tuscaloosa.com/bids>. It is the responsibility of the bidder to check this page for any addendums before submitting their bid.

The term of this contract shall be for a period of one (1) year from the date of the Purchase Order hereof and shall automatically renew each year for up to two (2) years for a total maximum contract term of three (3) years from the date of execution hereof, unless sooner terminated pursuant to the provision herein provided. However, either party may elect not to renew the contract by giving the other party thirty (30) days written notice prior to the anniversary date, in which event the contract shall terminate on the anniversary date. A sample contract follows this bid document.

Vendor to submit the following:

- Signed Special Conditions page
- Any necessary descriptive literature and/or specifications information as outlined above and/or elsewhere in this document
- Completed and signed Specifications/Bid Submissions page(s)
- Completed and signed Bidder's Response Form

NOTE: Sheet(s) submitted without Company Name & Signature WILL NOT be considered for bid award.

**VENDOR MUST SUBMIT AN ORIGINAL BID AND ONE COMPLETE COPY OR THE BID MAY BE REJECTED.**

Bid submissions shall be submitted in a sealed envelope and addressed to: David Coggins, Purchasing Agent, 2201 University Blvd., Tuscaloosa, AL 35401. The name and address of the bidder, the date and hour of the bid opening and the Bid Title shall be placed on the outside of the envelope.

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## SUMMARY OF WORK

### 1. WORK COVERED BY CONTRACT DOCUMENTS

The City of Tuscaloosa is a member of the Alabama One Call System. It is the intent of the City of Tuscaloosa to retain the services of a qualified and experienced underground utility locating service contractor to locate water distribution transmission lines, water distribution service lines and sanitary sewer lines as requested through the Alabama One Call system. This contract will be for the 2019 Fiscal Year (October 1, 2018 through September 30, 2019) and the City contract will include an option to renew annually for a period of three years.

### 2. WORK SCHEDULE

The CONTRACTOR shall be furnished all locate request by Alabama One Call.

### 3. QUANTITIES

The quantities listed in this Bid Proposal are for determining the most qualified bidder for this contract and are only estimated quantities from past history.

### 4. CONTRACTOR RESPONSIBILITIES

- A. The CONTRACTOR is responsible to provide a list of at least three project references that are in same size and scope.
- B. The CONTRACTOR shall provide a list of any subcontractors used in the execution of this project.
- C. The CONTRACTOR shall provide sufficient qualified staff, equipment and supplies to perform the duties outlined in this project.
- D. The CONTRACTOR shall receive and records locate requests from the One-Call center during normal business hours of the One-Call center and respond within required time frame.
- E. The CONTRACTOR shall receive and record emergency locate requests outside normal business hours and respond within two hours of the original call.
- F. The CONTRACTOR shall digitally photograph all completed locate requests including any potential damages that might occur whether at fault or not at fault damages
- G. The CONTRACTOR is responsible for all traffic control measures.
- H. The CONTRACTOR shall provide the following marking types:
  - 1. Direct Buried Lines will have a single mark usually about 2 inches by 12 inches and spaced about every three paces or about 10 feet.
  - 2. Conduits will be marked with a single stripe on either side of the system and a dot or diamond in the center.

- I. The CONTRACTOR shall respond to AL 811 locate requests by marking the approximate location of the water and sanitary sewer facilities specified in this contract in the excavation area within 48 hours. The CONTRACTOR will mark or flag their facilities in accordance with the color code outlined in Alabama Act 94-487.

These colors include:

1. BLUE  
Potable Water
2. GREEN  
Sewer or Drain Lines

The marks or markings shall indicate the name, initials, or logo of the owner and operator of the underground facility and the width of the underground facility if it is greater than two inches.

**5. OWNER RESPONSIBILITIES**

- A. The owner shall provide a shape file of its sanitary sewer line.
- B. The owner shall provide a shape file of its sanitary sewer lines.
- C. The owner shall provide access to intersection mapping for all water distribution lines.

**BIDDER'S RESPONSE FORM**

MESSAGE TO BIDDERS: Please review your bid documents for accuracy, completeness, required documentation, and necessary signatures before submitting. Please label the outer mailing/shipping package with the bid information as directed.

Item No.	Quantity	Unit	Description	Unit Cost	Total
1	20,000	Per One Call Ticket	Locate water distribution transmission and service lines and sanitary sewer gravity and force main lines for each Alabama One Call Request. Each call out granted one hour callout time.		\$ _____
2	250	Per One Call Ticket	Emergency Locates of water distribution transmission and service lines and sanitary sewer gravity and force main lines for each Alabama One Call Request that is past normal business hours.		\$ _____
3	550	Per 1/4 hour	For each callout/locate that extends past one hour of time, the locating service will bill a rate per 1/4 hour spent at the jobsite after the first hour.		\$ _____
			<b>TOTAL</b>		\$ _____

COMPANY NAME: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

COMPLETE MAILING ADDRESS: \_\_\_\_\_  
 \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

DELIVERY TIME: \_\_\_\_\_

COPIES SUBMITTED:

\_\_\_\_\_ **VENDOR MUST SUBMIT AN ORIGINAL BID AND ONE COMPLETE COPY OR THE BID MAY BE REJECTED.**

Awarded bidder(s) may be required to obtain a City of Tuscaloosa business license in order to provide goods and/or services in response to this bid and subsequent contract(s). Inquiries regarding business license requirements should be directed to the City's Revenue & Financial Services Division at (205) 248-5200. Failure to obtain and maintain required city business license(s) may result in rescinding of bid award and contract termination.

Note: 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.

**FAILURE TO COMPLETE ALL OF THE ABOVE WITH AN AUTHORIZED SIGNATURE MAY SUBJECT BID TO REJECTION.**

**NON-BIDDER RESPONSE FORM**

For purposes of maintaining accurate bidder's list and facilitating your firm's response to our invitation for bid, the City of Tuscaloosa is interested in ascertaining reasons for prospective bidders' failure to respond to invitations for bids. If your firm is not responding to this bid, please indicate the reason(s) by checking any appropriate item(s) below and returning this form to Mr. David Coggins, Purchasing Agent, 2201 University Blvd., Tuscaloosa, Alabama 35401. Failure to either submit a bid proposal or return this form may result in removal of your firm's name from our bidder's lists. Thank you for your cooperation.

We are not responding to this invitation for bid for the following reason(s):

\_\_\_ Items or materials request not manufactured by us or not available to our company.

\_\_\_ Our items or materials do not meet specifications.

\_\_\_ Specifications not clearly understood or applicable (too vague, too rigid, etc.)

\_\_\_ Quantities requested are too small.

\_\_\_ Insufficient time allowed for preparation of bid.

\_\_\_ Incorrect address used. Correct mailing address is:

\_\_\_ \_\_\_\_\_  
Our branch/division handles this type of bid. Correct name and mailing address is:

\_\_\_ Other reason(s): \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Signature: \_\_\_\_\_

STATE OF ALABAMA )  
TUSCALOOSA COUNTY )  
CITY OF TUSCALOOSA )

**CONTRACT**

**2019 Water and Sewer Line Locate Project  
(A18-1039)**

**THIS AGREEMENT** made and entered into this \_\_\_ day of \_\_\_, 2018 by and between CITY OF TUSCALOOSA, Alabama, a Municipal Corporation, hereinafter sometimes referred to as "City" or "Owner" and \_\_\_\_\_, whose business address is \_\_\_\_\_, hereinafter sometimes referred to as "Contractor"; and

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

**WHEREAS**, the City of Tuscaloosa has received bids for line location services for the for 2019 Water and Sewer Line Locate Project; and

**WHEREAS**, \_\_\_\_\_ was the lowest responsive bidder for 2019 Water and Sewer Line Locate Project and has agreed to provide line location services for the City of Tuscaloosa based on the Contract Documents herein defined.

**NOW, THEREFORE**, for and in consideration of the respective covenants herein contained, the parties agree to the following:

**I. CONTRACT DOCUMENTS**

As used throughout the documents constituting the contract, the term "Contract Documents" shall mean and include the following: Notice to Bidders, the Advertisement for Bids, Addenda (if issued), the Instructions to Bidders, the Proposal, together with this Contract and any modifications, if made, the Performance Bond, executed by the Contractor in connection with this contract, insurance requirements, certificates and map.

All such documents hereinabove enumerated are adopted herein by reference and constitute the Contract between the parties to the same extent as if each were set out in full in this agreement.

**II. DEFINITIONS**

"City" or "Owner" means the City of Tuscaloosa, Alabama.

"Contractor" means the successful bidder(s) awarded by the City being the party of the first part to the agreement or the legally authorized representative of such party.

**III. SCOPE OF SERVICE**

The City of Tuscaloosa is a member of the Alabama One Call System. It is the intent of the City of Tuscaloosa to retain the services of a qualified and experienced underground utility locating service contractor to locate water distribution transmission lines, water distribution service lines and sanitary sewer lines as requested through the Alabama One Call system.



This contract will be for the 2019 Fiscal Year (October 1, 2018 through September 30, 2019) and the City contract will include an option to renew annually for a period of three years.

WORK SCHEDULE: The CONTRACTOR shall furnish all locate request by Alabama One Call.

QUANTITIES: The quantities listed in this Bid Proposal are for determining the most qualified bidder for this contract and are only estimated quantities from past history.

CONTRACTOR RESPONSIBILITIES:

The CONTRACTOR is responsible to provide a list of at least three project references that are in same size and scope.

The CONTRACTOR shall provide a list of any subcontractors used in the execution of this project.

The CONTRACTOR shall provide sufficient qualified staff, equipment and supplies to perform the duties outlined in this project.

The CONTRACTOR shall receive and record locate requests from the One-Call center during normal business hours of the One-Call center and respond within required time frame.

The CONTRACTOR shall receive and record emergency locate requests outside normal business hours and respond within two hours of the original call.

The CONTRACTOR shall digitally photograph all completed locate requests including any potential damages that might occur whether at fault or not at fault damages.

The CONTRACTOR is responsible for all traffic control measures.

The CONTRACTOR shall provide the following marking types:

- Direct Buried Lines will have a single mark usually about 2 inches by 12 inches and spaced about every three paces or about 10 feet.
- Conduits will be marked with a single stripe on either side of the system and a dot or diamond in the center.

The CONTRACTOR shall respond to AL 811 locate requests by marking the approximate location of the water and sanitary sewer facilities specified in this contract in the excavation area within **48 hours**.

The CONTRACTOR will mark or flag their facilities in accordance with the color code outlined in Alabama Act 94-487.

- These colors include:
  1. BLUE  
Potable Water
  2. GREEN  
Sewer or Drain Lines

- The marks or markings shall indicate the name, initials, or logo of the owner and operator of the underground facility and the width of the underground facility if it is greater than two inches.

**OWNER RESPONSIBILITIES:**

The owner shall provide a shape file of its Water Distribution lines.

The owner shall provide a shape file of its Sanitary Sewer lines.

The owner shall provide access to intersection mapping for all Water Distribution lines.

**IV. PAYMENT FOR SERVICES**

The Contractor will invoice the City by the first day of each month for all services performed during the previous month.

Provided; however, the City 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 an invoice.

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

Unit prices for services are as follows:

\$ \_\_\_\_\_ /call ticket for: Locate water distribution transmission and service lines and sanitary sewer gravity and force main lines for each Alabama One Call Request. Each call out granted one hour callout time.

\$ \_\_\_\_\_ /call ticket for: Emergency Locates of water distribution transmission and service lines and sanitary sewer gravity and force main lines for each Alabama One Call Request that is past normal business hours.

\$ \_\_\_\_\_ /quarter hour for: For each callout/locate that extends past one hour of time, the locating service will bill a rate per 1/4 hour spent at the jobsite after the first hour.

In an amount not to exceed: \_\_\_\_\_ (\$ \_\_\_\_\_) per one year term.

**V. TERM OF CONTRACT**

This agreement shall be effective on full execution by all parties. The term of this agreement shall be one (1) year, commencing on October 1, 2018. The City contract will have the option to renew annually for a period of three years three (3) years. Both parties recognize that the time is of the essence in carrying out the terms of this contract.

**VI. PROJECT REPRESENTATIVES**

The City and the Contractor respectively designate a person(s) to act as their authorized representatives in matters and decisions pertinent to the performance of this agreement. Each

authorized representative shall have powers to bind the parties but only within the parameters of this agreement including, but not limited to, transmitting instructions, receiving information, making project-related decisions not requiring official approval and other matters. Neither shall have the authority to vary a term or condition of the Contract Documents.

A. Contractors designated representative: \_\_\_\_\_

B. The CITY'S designated representative shall be Cory Sudduth, Associate Director Water/Wastewater Infrastructure and Public Services for 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:

City: Glenda Webb, City Attorney, P.O. Box 2089, Tuscaloosa, Alabama 35403.

Contractor: \_\_\_\_\_

## VII. INDEMNIFICATION

The Contractor agrees to protect, indemnify, defend, and save harmless the City, its present and future officials, officers, employees, agents, subcontractors, representatives, and assigns for any loss, claim, liability penalty, fine, forfeiture, demand, cause of action, suit and cost and expenses incidental thereto (including cost of defense, settlement and reasonable attorney's fees), arising out of or relating to the Contractor's negligence or willful acts or omissions relating to line location services except for occurrences caused by or arising out of the negligence or willful conduct of the City, its officers, employees and agents.

## VIII. INSURANCE REQUIREMENTS

1. **Workmen's Compensation.** The Contractor shall provide and maintain during the term of any extensions of this contract Workmen's Compensation as required by Alabama Law for all of its employees. In case any class of employees engaged in any work under this contract is not protected under Workmen's Compensation Statute, the Contractor shall provide, and shall cause each subcontractor to provide adequate accident insurance for the protection of its employees not otherwise protected.

2. **Comprehensive Automobile and Vehicle Liability Insurance.** The Contractor shall maintain during the term of any extension of this Contract, Comprehensive Automobile and vehicle liability insurance. This insurance shall be written in Comprehensive form and shall protect the Contractor and the City against the claims for injuries to members of the public (including City employee) or damages to property of others (including City property) arising out of any act of the Contractor or any of its agents, employees, or subcontractors and shall cover both on site and off site operations under the contract and the insurance coverage shall extend to any motor vehicles or other related equipment irrespective of whether the same is owned, unowned or hired. The limits of liability shall not be less than \$1,000,000.00 (One Million Dollars) combined, single limit or equivalent.

3 **Commercial general liability.** This insurance shall be written in comprehensive form and shall protect the Contractor 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 Contractor or of any of its agents, employees, or subcontractors. The limit of liability shall not be less than a \$1,000,000.00 (One Million Dollars) combined single limit.

#### 4. **Proof of Carriage of Insurance**

The Contractor shall furnish the City with satisfactory proof of carriage of insurance required herein, in the form of an insurance certificate or if the City elects in the form of a policy. Insurance shall be in the form satisfactory to the City.

(a) Cancellation: The certificate and policy, as the case may be, shall state that the City shall be given thirty (30) days written notice of cancellation of any change in the insurance coverage. Certificates shall not exclude liability for failure to notify nor shall it state "And never to notify" in lieu of what is required.

(b) There shall be a statement that the Contract and any subcontractor waive subrogation as to the City, its officers, agents, and employees.

(c) There shall be a statement that full aggregate limits apply for this contract.

(d) Authorized representatives of the Insurance Company shall certify that he/she is authorized to execute certificate and that coverages stated are correct and in compliance with the contract documents.

The insurance coverages specified above shall constitute minimum requirements and the City, its officers, agents and employees shall be named as an additional insured in insurance coverages identified in items "2" and "3".

### **IX. DEFAULT**

Except as otherwise provided herein, if either party breaches this Agreement or defaults in the performance of any of the covenants or conditions contained herein for fifteen (15) days after the other party has given the party breaching or defaulting written notice of such breach or default, unless a longer period of time is required to cure such breach or default and the party breaching or defaulting shall have commenced to cure such breach or default within said period and pursues diligently to the completion thereof, the other party may: (i) terminate this Agreement as of any date which the said other party may select provided said date is at least thirty (30) days after the fifteen (15) days in which to cure or commence curing; and (ii) have recourse to any other right or remedy to which it may be entitled by law, including, but not limited to, the right for all damage or loss suffered as a result of such termination. In the event either party waives default by the other party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent breach of default.

### **X. BOND**

During the entire term of this Agreement the Company shall furnish to the City a performance bond in the form attached hereto or a Letter of Credit. The performance bond shall be in the amount of \$250,000.00. The Letter of Credit shall be in the amount of \$250,000.00 from

a financial institution approved by the City which guarantees that if the Contractor is in default of the terms of the contract, then the City will be paid by said financial institution.

#### **XI. LIQUIDATED DAMAGES**

In the event the Contractor fails to commence the services or fails to provide the services as required in Contract Documents, liquidated damages shall be paid to the City at a rate of \$250 per day until the services are commenced and/or provided in all respects. Additionally actual damages shall be paid to the City for any monies paid by the City for alternative services until contract compliance is achieved. Liquidated and actual damages for failing to provide services shall be cumulative. The City shall not waive any other rights by collecting such liquidated damages or actual damages or waiving the same. The amounts of such liquidated and actual damages incurred by reason of failure to commence or perform the services stipulated herein are hereby agreed as reasonable estimated of the costs which may be accrued by the City. It is expressly understood and agreed that these amounts are not to be considered in the nature of penalties, but as damages which have accrued against the Contractor. The City shall have the right to deduct such damages from any amount due, or that may become due the Contractor, or the amount of such damages shall be due and collectible from the contractor or surety.

#### **XII. INDEPENDENT CONTRACTOR**

The Contractor enters into this Contract with the City as an independent contractor and, as such, agrees that neither the City nor its officers, agents, employees or inspectors shall be responsible for the acts or omissions of the Contractor, or any subcontractor, or any of the Contractor's or subcontractor's agents or employees, or any other persons performing any of the work pursuant to this Contract.

#### **XIII. SUBLETTING OR ASSIGNING OF CONTRACT**

(a) Limitations: The Contractor shall not sublet, assign, transfer, convey, sell or otherwise dispose of any portion of this contract, his right, title or interest therein, or its power to execute such contract, to any person, firm or corporation without written consent to the City and such written consent shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract. A transfer of more than 50 percent of the value or ownership of the Contractor will be construed as an assignment. Unless otherwise stipulated in the proposal or general conditions, the Contractor shall perform with its own organization work with the value not less than fifty (50) percent of the value of all work embraced in the contract.

(b) Subcontractor's Status: A subcontractor shall be recognized only in the capacity of an employee or agent of the Contractor.

#### **XIV. THIRD PARTY BENEFICIARIES**

It is the intent of the parties hereto that there shall be no third party beneficiaries to this agreement.

#### **XV. TERMS OF THE CONTRACT**

Unless subsequently modified in writing, terms of this contract agreement shall control anything to the contrary in any of the other contract documents.

## XVI. NON DISCRIMINATION

The Contractor agrees that in performing the work and services as required herein under this agreement, not to discriminate against any person on the basis of race color, religion, sex, age or disability. (The Contractor shall fully comply with the Americans with Disabilities Act).

## XVII. MISCELLANEOUS:

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

- A. 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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.
- F. 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.
- G. 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, 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.

**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.

**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 City and/or Contractor which are related to the Contractor's operations. The City 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.

**IN TESTIMONY WHEREOF,** the said Contractor has hereto affixed its signature and said City of Tuscaloosa has caused these presents to be executed on the day and year first above written.

\_\_\_\_\_  
**CONTRACTOR**

BY: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_



**CITY OF TUSCALOOSA, A MUNICIPAL CORPORATION:**

\_\_\_\_\_  
Walter Maddox, Mayor

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 that the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_  
Notary Public.

My Commission Expires:

\_\_\_\_\_

STATE OF ALABAMA        )  
TUSCALOOSA COUNTY     )

I, \_\_\_\_\_, a Notary Public in and for the State at Large, hereby certify that \_\_\_\_\_, who is named as \_\_\_\_\_, 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 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public.

My Commission Expires:

\_\_\_\_\_

SAMPLE

**PERFORMANCE BOND**  
**A18-1039**  
**(2018)**

STATE OF ALABAMA            )  
TUSCALOOSA, COUNTY        )

**KNOWN ALL MEN BY THESE PRESENTS**, that we, \_\_\_\_\_  
as principal and \_\_\_\_\_  
(hereinafter called the "Surety"), as surety, do hereby acknowledge ourselves indebted and firmly bound and held unto the City of Tuscaloosa, Alabama, (hereinafter called the "City") a municipal corporation existing under and by virtue of the laws of the State of Alabama, for the use and benefit of those entitled thereto, in the penal sum of \_\_\_\_\_  
\_\_\_\_\_ for the payment of which well and truly be made in lawful money of the United States, we do hereby bind ourselves, our successors and assigns and personal representatives, jointly and severally, firmly by the presents.

**BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:**

**WHEREAS**, the City has entered into a certain written contract with said Contractor for providing line location services in accordance with contract documents therefore on file in the Office of the City Purchasing Department at the price of, to-wit:

Unit prices for services are as follows:

\$ \_\_\_\_\_ /call ticket for: Locate water distribution transmission and service lines and sanitary sewer gravity and force main lines for each Alabama One Call Request. Each call out granted one hour callout time.

\$ \_\_\_\_\_ /call ticket for: Emergency Locates of water distribution transmission and service lines and sanitary sewer gravity and force main lines for each Alabama One Call Request that is past normal business hours.

\$ \_\_\_\_\_ /quarter hour for: For each callout/locate that extends past one hour of time, the locating service will bill a rate per 1/4 hour spent at the jobsite after the first hour.

In an amount not to exceed: \_\_\_\_\_ (\$ \_\_\_\_\_) per one year term as more fully appears in said written contract bearing the date of \_\_\_\_\_, 2018, which contract is hereby referred to and made a part hereof to the same extent as if set out herein in full.

**NOW, THEREFORE**, if the Contractor shall fully and faithfully perform all the undertakings and obligations under the said agreement or contract herein before referred to and shall fully indemnify and save harmless the said City from all costs and damages whatsoever which it may suffer by reason of any failure on the part of said Contractor so to do, and shall fully reimburse and repay the said City any and all outlay and expense which it may incur in making good any such default, this obligation or bond shall be null and void, otherwise it shall remain in full force and effect.

And, for value received it is hereby stipulated and agreed that no change, extension of time, alteration or addition to the terms of said agreement or contract or in the work to be performed thereunder or the specifications accompanying the same shall in any wise affect the obligations of the principal or of the surety under this bond, and notice is hereby waived of any such change, extension of time, alternative of or addition to the terms of the agreement or contract or to the work or to the specifications.

**IN WITNESS WHEREOF**, the said Contractor has hereunder affixed its signature and said Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Principal  
By \_\_\_\_\_  
T Title

\_\_\_\_\_  
Surety  
By \_\_\_\_\_

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Title

SAMPLE