

Contract No. _____

SERVICES AGREEMENT

City of Pascagoula
603 Watts Ave
Pascagoula, MS 39567

Mississippi Power Company
P.O. Box 4079
Gulfport, Mississippi 39502-4079

("MPC")

THIS SERVICES AGREEMENT ("Agreement") is entered into by and between Mississippi Power Company and the above referenced Customer, and is effective on the date it is executed by Customer and accepted by MPC. MPC hereby agrees to perform and provide Customer with the services described hereinbelow ("Services"), on the terms and conditions set-forth on the face page of this Agreement and the reverse side hereof.

Description of Services

Total Charges

Install: (66) 40' direct buried aluminum breakaway poles, (66) 8' brackets, (66) 240W LED Archeon Fixtures (10,700') Conductor, (10,700') bored conduit, (3) metering points, (66) photocells, (69) sl Pedestals, (198) connectors, (66) fuses and holders, (3,036') #12 triplex, (66) ground rods, (1,035') 2" flex conduit, and misc. material to complete installation

Total - \$639,660.00

Location: HWY 90 South Side Lighting

AGREED TO BY:

ACCEPTED BY:

("Customer")

Mississippi Power Company
("MPC")

By: _____
(Signature)

By: _____
(Signature)

(Name typed or printed)

Giff Ormes

(Name typed or printed)

Title: _____

Title: **Marketing & Sales Director**

Date: _____

Date: _____

1. **Payment.** Customer shall pay or cause to be paid to MPC the full price for the Services upon acceptance of the Project. Payment shall be made net thirty (30) days of invoice date.

2. **Term.** For each Service provided under this Agreement, the Exhibit attached to this Agreement will state the term during which those Services may be provided. This Agreement will continue in effect until the last term contained in any Exhibit to this Agreement expires or is terminated.

3. **Termination.** If Customer fails to make any payment due hereunder, and such failure continues for seven (7) days after said payment is due MPC, then MPC may terminate this Agreement for cause. In the event of such termination, Customer shall pay MPC for all work performed to the date of termination, overhead and profit on all work covered by this Agreement, and demobilization costs.

4. **Limited Warranty.** For a period of ninety (90) days after the completion of the Services, MPC warrants that the Services performed by MPC hereunder, will be performed in a good, professional, workmanlike and competent manner, in conformity with all applicable professional standards. If Customer notifies MPC of any defective or non-conforming Services within ninety (90) days after the completion of the Services, then MPC shall correct or re-perform the defective or non-conforming Services; provided, however, that, MPC's sole obligation and Customer's exclusive remedy for defective or non-conforming Services is for MPC to correct or re-perform the defective or non-conforming Services within ninety (90) days after the completion of the Services, subject to the limitation of liability set-forth herein. MPC shall be entitled to rely on the accuracy and currency of information supplied by or at the direction of Customer, or available from generally acceptable reputable sources. MPC's WARRANTY EXPRESSED IN THIS PARAGRAPH IS IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ASSUMES FULL RESPONSIBILITY FOR THE SELECTION OF THE PARTICULAR SERVICES TO BE PERFORMED HEREUNDER BY MPC TO ACHIEVE CUSTOMER'S PURPOSES.

5. **Limitation of Liability.** MPC, its affiliates and parent and their respective agents, representatives, employees, successor's and assigns, liability to Customer, its respective successors or assigns, for damages or alleged damages whether arising from breach of this Agreement, breach of warranty, tort or otherwise with respect to the Services performed hereunder by MPC, is limited to and shall not exceed the amount of compensation paid to MPC hereunder for the particular Services out of which the liability arose. In no event shall MPC, its affiliates and parent and their respective agents, representatives, employees or successors and assigns be liable to Customer or any individual or entity for any unforeseeable, indirect, incidental, punitive, consequential or special damages, including without limitation, any loss of revenues or loss of profits.

6. **Independent Contractor.** MPC shall be deemed to be an independent contractor in the performance of the Services hereunder and shall not be considered or permitted to be an agent, servant, joint venturer or partner of Customer. All persons furnished, used, retained or hired by or on behalf of MPC shall be considered to be solely the employees or agents of MPC.

7. **Force Majeure.** MPC shall not be deemed to be in default of any provision of this Agreement or liable for failures in performance resulting from acts or events beyond the reasonable control of MPC. Such acts shall include but not be limited to acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes, or other "force majeure" events beyond MPC's reasonable control.

8. **Incorporation of Exhibits.** Each Exhibit referenced in and attached to this Agreement is incorporated by reference as if fully set forth herein. In the event of a conflict between the terms of this Agreement and any Exhibit, this Agreement shall control.

9. **Indemnification.** To the extent permitted by law, Customer party shall and hereby does indemnify and hold harmless MPC, its parent and affiliates, their respective officers, directors, employees and agents, from and against any and all losses, damages, injuries (including death), causes of action, claims, demands and expenses, including reasonable legal fees and expenses, arising out of a hazardous waste, spill or condition on the Customer's property, or due to the negligence or willful misconduct of Customer. Such indemnification shall survive the termination of expiration of this Order.

10. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the Laws of the State of Mississippi, United States of America (without giving effect to principles of conflicts of laws). The interested party hereby submits to the non-exclusive jurisdiction of the United States District Court for the Southern District of Mississippi and to the State Courts of the State of Mississippi for the purposes of resolving any dispute arising under or in connection with this Agreement and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereinafter have to any such proceedings.

11. **Customer Assistance.** Customer understands and agrees that it will use reasonable efforts in performing assistance and support for MPC as MPC performs its obligations hereunder. Any delays, facilities unavailability, tardiness in response or Customer fault (other than force majeure events) will constitute grounds for an equitable adjustment in MPC's compensation and extension of performance periods.

12. **Environmental Concerns.** If and to the extent that any Services are performed in connection with, on, or regarding any real property, MPC disclaims any and all responsibility for or concerning any present or past disposal of pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Comprehensive Environmental Response Compensation Liability Act, as amended (42 U.S.C. § 9601 et. seq.), and the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et. seq.), or any other environmental law, ordinance, rule or regulation, other industrial and solid wastes and other pollutants, contaminants and dangerous and toxic substances (collectively "Hazardous Substances") on or in such real property, and for or concerning any conditions with respect to soil, surface waters, ground waters, stream settlements and similar environmental conditions (collectively, "Environmental Conditions") on or off site of such real property, whether any or all of the above arises or results from the activities of Customer or the uncertain or unknown activities of Customer's predecessors in interest to such real property or any other person or entity. It is Customer's sole obligation, as its own cost and expense (and at the request of MPC should MPC discover any Hazardous Substances on or Environmental Conditions at such real property), to comply or to ensure compliance with, and for all matters arising out of all laws, ordinances, rules and regulations, agreements with governmental entities and court and administrative orders with respect to or regarding any Hazardous Substances, Environmental Conditions and/or any other circumstances, activity and/or incident referenced in the previous sentence, including without limitation the performance of any and all necessary or appropriate remedial action thereto or

therefore. To the extent permitted by law, Customer agrees to indemnify MPC, its affiliates and their respective employees, officers, agents and directors from and against all injuries, losses, damages, costs, expenses and other liabilities, including without limitation, attorneys' fees and expenses of litigation, which may arise out of, result from or be connected with any Hazardous Substances, Environmental Conditions and/or any other circumstances, activity and/or incident referenced in the previous two sentences. Customer warrants that it has not caused or permitted any activity on such real property that generates, manufactures, refines, transports, treats, stores, handles, disposes, transfers, produces or processes Hazardous Substances, except in compliance with all applicable laws, ordinances, rules and regulations, agreements with governmental agencies and court and administrative orders, and has not caused or permitted and has no knowledge of the release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping of any Hazardous Substances on or off the site of such real property. Customer agrees to indemnify MPC, its parent and affiliates and their respective employees, officers, agents and directors from and against all injuries, losses, damages, costs, expenses and other liabilities, including without limitation attorneys' fees and other expenses of litigation, which may arise out of, result from or be connected with any circumstances, activity and/or incident referenced in the previous sentence.

13. **Partial Invalidity.** If any provision of this Agreement is found to be unenforceable then, notwithstanding such unenforceability, this Agreement shall remain in effect and there shall be substituted for such unenforceable provision a like but enforceable provision which most nearly effects the intention of the parties. If a like but enforceable provision cannot be substituted, the unenforceable provision shall be deemed to be deleted and the remaining provisions shall continue in effect, provided that the performance, rights and obligations of the parties hereunder are not materially adversely affected by such deletion.

14. **Changes.** If Customer desires to make a change in the Scope of Work set forth in Exhibit A or to increase the time for performance, if any, of MPC's Services under this Agreement, or to adjust the amount payable to MPC under this Agreement ("Contract Price"), it may request a Change Order for a change in the project, the time for performance, and/or the Contract Price. The Change Order will become effective when it is signed by a duly authorized representative of both Customer and MPC. Without limitation, MPC shall be entitled to a Change Order extending the time for performance and/or increasing the Contract Price if: (i) A Force Majeure event causes a delay or increase in cost with respect to any aspect of the services; (ii) a change in any applicable law or regulation or any legal action prevents or delays the performance of any aspect of the Services or increases the cost of any aspect of the Services; (iii) MPC is delayed at any time in the progress of performing its obligations under this Agreement by an act of Customer or any contractor or other entity employed by Customer; or (iv) if conditions are encountered at Customer's facilities which were concealed or differ from those indicated in this Agreement or any attachment hereto, or are unknown physical conditions of an unusual nature which differ from those ordinarily found to exist in similar activities of the character provided for by this Agreement.

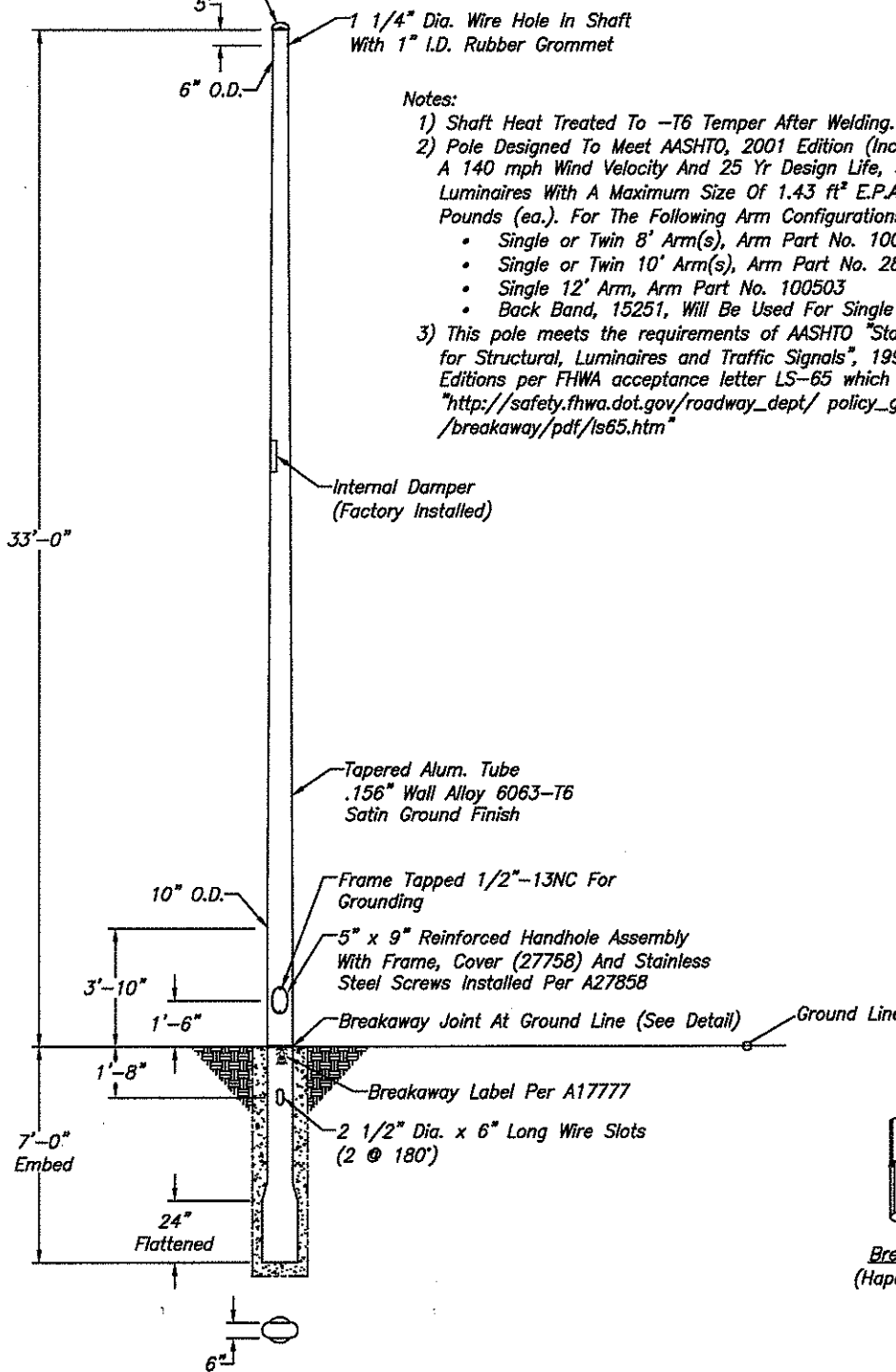
15. **Right to Subcontract.** It is understood and agreed that MPC shall have the right to subcontract all of its performance obligations under this Agreement, including, but not limited to, the provision of equipment, installation, warranty and maintenance services set forth herein; provided however, that MPC shall remain responsible to Customer for all obligations so subcontracted. Customer agrees that any such subcontractor shall be entitled to access and use the Customer's facility for the performance of Services subcontracted by MPC. Customer agrees to provide any subcontractor designated in writing by MPC to perform its obligations hereunder, with a copy of any notice required to be given to MPC by Customer hereunder.

16. **Disputes.** The parties agree to use reasonable efforts to resolve any and all disputes arising under or in connection with this Agreement by mutual consultation. However, if any dispute exists which remains unresolved longer than ten (10) business days from the date on which one party notifies the other party of such dispute in writing, then either party may refer such dispute to final, exclusive, and binding resolution pursuant to arbitration before the American Arbitration Association, unless the parties mutually agree otherwise. Such arbitration shall be conducted in Gulfport, Mississippi, unless the parties mutually agree otherwise, in accordance with the American Arbitration Association's Construction Industry Arbitration Rules then in effect. A demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association, and shall be made within a reasonable time after the claim has arisen, and in no event be made after the date when institution of legal or equitable proceedings based upon such claim would be barred by the applicable statute of limitations. Any award entered in the arbitration may be enforced by any court having competent jurisdiction thereof. No arbitration will include, by consolidation, joinder, or otherwise, parties other than MPC and Customer.

17. **Reuse of Documents.** All documents, including but not limited to, drawings, specifications, and computer software, prepared by MPC pursuant to this Agreement are instruments of service with respect to the Customer's facility. They are not intended or represented to be suitable for reuse by Customer or others on extensions of the Customer's facility or on any other project. Any reuse without prior written verification or adaptation by MPC for the specific purpose intended will be at Customer's sole risk and without liability or legal exposure to MPC, its parent or affiliates. Customer shall defend, indemnify and hold harmless MPC, its parent and affiliates against all claims, losses, damages, injuries, and expenses, including attorneys' fees, arising out of or resulting from such reuse.

18. **Entire Agreement.** This Agreement contains the entire agreement of the parties and there are no oral or written representations, understandings or agreements between the parties respecting the subject matter hereof that are not fully expressed herein.

Alum. Pole Cap With
Stainless Steel Screws



Notes:

- 1) Shaft Heat Treated To -T6 Temper After Welding.
- 2) Pole Designed To Meet AASHTO, 2001 Edition (Including Breakaway) For A 140 mph Wind Velocity And 25 Yr Design Life, Supporting Up To Two Luminaires With A Maximum Size Of 1.43 ft² E.P.A. (ea.) & 34 Pounds (ea.). For The Following Arm Configurations:
 - Single or Twin 8' Arm(s), Arm Part No. 100502
 - Single or Twin 10' Arm(s), Arm Part No. 28386
 - Single 12' Arm, Arm Part No. 100503
 - Back Band, 15251, Will Be Used For Single Arms
- 3) This pole meets the requirements of AASHTO "Standard Specifications for Structural, Luminaires and Traffic Signals", 1994 and 2001 Editions per FHWA acceptance letter LS-65 which can be found at: "http://safety.fhwa.dot.gov/roadway_dept/policy_guide/road_hardware/breakaway/pdf/ls65.htm"

Internal Damper
(Factory Installed)

Tapered Alum. Tube
.156" Wall Alloy 6063-T6
Satin Ground Finish

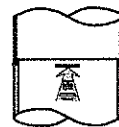
Frame Tapped 1/2"-13NC For
Grounding

5" x 9" Reinforced Handhole Assembly
With Frame, Cover (27758) And Stainless
Steel Screws Installed Per A27858

Breakaway Joint At Ground Line (See Detail) Ground Line

Breakaway Label Per A17777

2 1/2" Dia. x 6" Long Wire Slots
(2 @ 180°)



Breakaway Joint
(Hapco No. 12592)

REF: 28385

WARNING: DO NOT INSTALL LIGHTING POLES WITHOUT LUMINAIRES

NO.	REVISIONS	DATE
1	Removed Chart And Arm (tnb)	7/18

hapco

Abingdon, Va.

TITLE 35' MH Breakaway Embed Pole

CUSTOMER Mississippi Power-40'OAL

SCALE 42 DATE 07/17/2018

BY TNB DWG. NO.

CHK'D

B100477

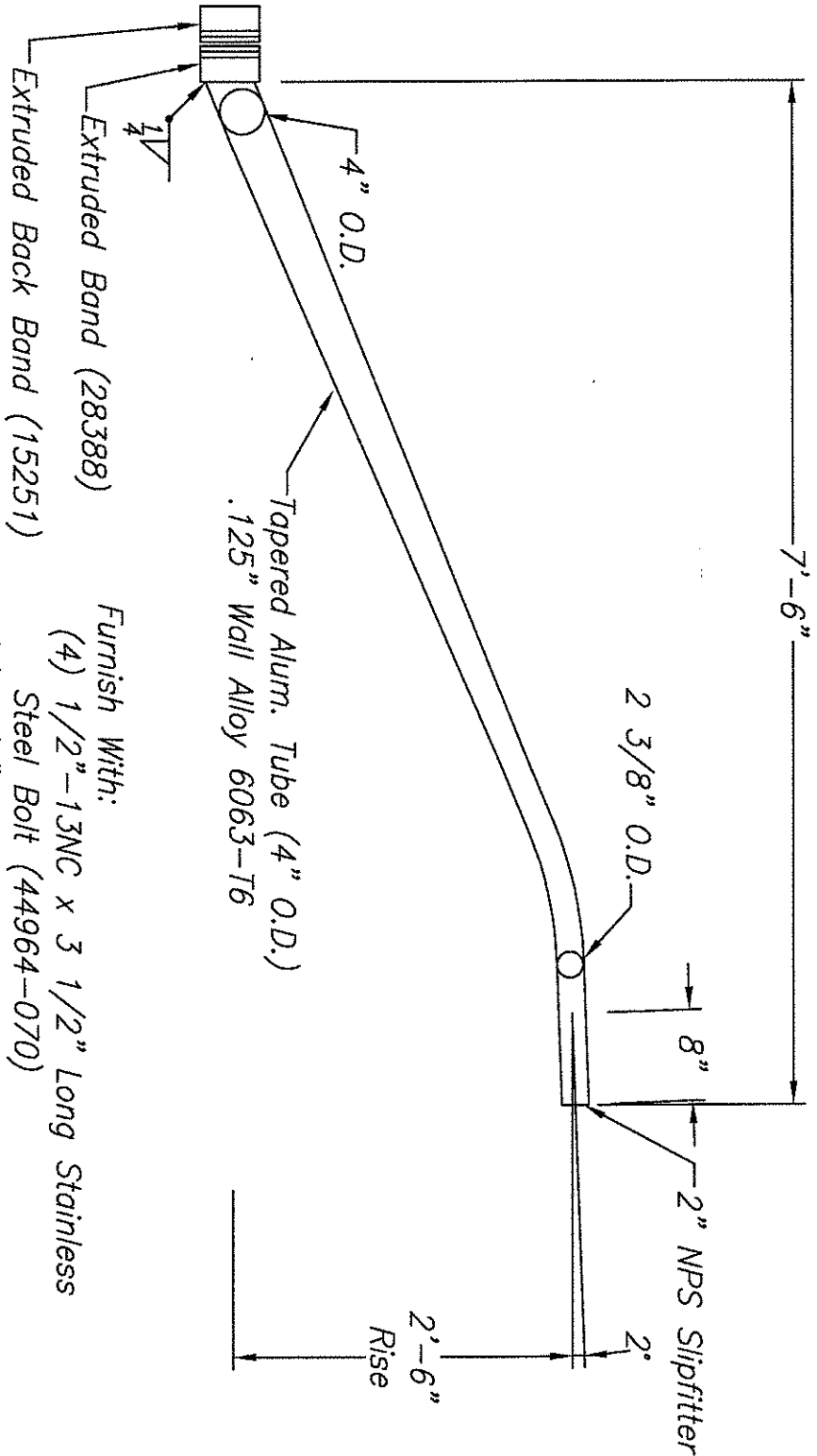
B100477

hapco

Abingdon, Va.

NO.	REVISIONS	DATE

TITLE 8' BRACKET (6")		CUSTOMER
SCALE 16	DATE 07/19/2018	DWG. NO. A100502
BY TNB	CHK'D	



- Furnish With:
- (4) 1/2"-13NC x 3 1/2" Long Stainless Steel Bolt (44964-070)
 - (4) 1/2"-13NC Stainless Steel Hex Nut (45368-011)
 - (4) 1/2" Stainless Steel Lockwasher (45369-011)
 - (8) 1/2" Stainless Steel Flatwasher (45369-011)