



City of Bentonville
Bentonville Utility Board Meeting
Tuesday, June 7th – 11:30 am
Bentonville City Hall 305 SW “A” St.
City Council Chambers

AGENDA

Call to Order
Pledge of Allegiance
Attendance
Approval of Minutes: May 17th, 2022

New Business

1. Bid Award – Terex Small Bucket – Travis Matlock, PE (pages 2-31)
2. Resolution – GDS Associates, Inc. – Travis Matlock, PE (pages 32-42)
3. Bid Waiver Amendment – BEUD Vehicles – Travis Matlock, PE (pages 43-45)
4. Position Re-classification – Travis Matlock, PE (pages 46-48)
5. Wastewater Collection System Analysis Presentation – Mike Bender, PE/Olsson
6. Utilities Annual Report – Jake Harper
7. Adjournment



Agenda Item Form

Date of City Council Meeting	6/14/2022
Department	Electric
Submitted by	Travis Matlock
Phone	479-271-5941

Item Type: (Check Applicable Item Type)					
☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☒ Resolution	☒ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Bid award to Terex Utilites, Inc. through participation in the Sourcwell Cooperative (Co-op) contract, 110421-TER to purchase a TL41 Aerial Device (bucket) for \$160,857 plus applicable taxes. Use of a Co-op is allowed pursuant to Arkansas State Statute 19-11-249; Purchasing performed an evaluation of 110421-TER, determining that the solicitation was in line with both Arkansas State Statute and the City's Purchasing Policy. This is a 2022 budgeted item.					

Estimated Cost	\$160,857 plus tax
Is this Item Budgeted?	☒ Yes ☐ No
If no, please explain how item will be funded (briefly explain in space below) :	



MEMORANDUM

DATE: June 14, 2022

TO: **City Council, Mayor Orman**

FROM: Travis Matlock, Electric Utility Director

RE: Bid Award – Terex Small Bucket

The Electric Dept. recommends awarding a bid to Terex Utilites, Inc. through participation in the Sourcewell Cooperative (Co-op) contract, 110421-TER to purchase a TL41 Aerial Device (bucket) for \$160,857 plus applicable taxes.

Use of a Co-op is allowed pursuant to Arkansas State Statute 19-11-249; Purchasing performed an evaluation of 110421-TER, determining that the solicitation was in line with both Arkansas State Statute and the City's Purchasing Policy. This is a 2022 budgeted item.

The price included mounting the aerial device onto a previously purchased cab & chassis.



TEREX®

CUSTOMER ORDER ACKNOWLEDGEMENT

Terex Utilities, Inc. - 3140 15th Avenue SE - Watertown, SD 57201 - Phone: 605-882-4000

Sourcewell 2022 Pricing 110421-TER

Date: **4/14/2022**

Quote Number: QU20014

Unit: TL41

City of Bentonville

3200 SW Municiple Dr

Bentonville AR 72712

(479) 271-5985

Attention: Doug Charest

Baseline Price: \$160,857

Grand Total Each: \$160,857

See Attached Options Page:

Prices are subject to change until shipment. Applicable taxes and surcharges to be added. Taxes, shipping, handling and lead times are estimates and subject to change. Quoted prices are based on total package and subject to change if all items not purchased. All prices quoted are in U.S. dollars unless otherwise specified. Payment by cash or certified check only. Chassis price based off current pricing available at time of quote. Pricing is subject to change based on vehicle sourcing; final price to be confirmed prior to time of invoice. Quote withdrawn after 30 days.

Please ensure the accuracy of the specifications and drawings you provide. Changes made after receipt of order may incur additional charges. If you are trading equipment in, you warrant that: You have good title to the trade-in; it is free of all liens and encumbrances; all information you have provided related to the trade-in is true and correct.

Terex purchased chassis through Terex preferred International Dealer will include at no additional cost a special tow package for 12 months/unlimited mileage to nearest International Dealership for a warrantable failure. Coverage limited to \$550 per incident. Roadside assistance call 1-800-448-7825

Terex purchased chassis through Terex preferred Freightliner Dealer will include at no additional cost a special tow package for 12 months/unlimited mileage/KM extended towing coverage \$550 cap FEX applies. Roadside assistance call 1-800-FTL-HELP

Notes:

- 1) Delivery Terms are: CPT Destination
- 2) Terms: Net 30 days
- 3) Delivery days from receipt of order shall be 360+Days

Buyer hereby agrees to purchase the products in this quotation, subject to acceptance by Seller. Buyer has read and agrees to Seller's Terms and Conditions of Sale.

Terex Utilities Inc.

Mike Stolp

Sales Coordinator

Clint Maners

Account Manager

Accepted By: _____

PO Number: _____

Quantity: _____

Grand Total: _____

Date: _____

 **WARNING** Cancer and Reproductive Harm
www.P65Warnings.ca.gov.

Options			
Date	4/14/22		
Quote(s) #	QU20014		
Customer Name	City of Bentonville		
Customer PO #			
No.	Description	Selling Price	Options:
1	Undercoat Body	\$2,350	☐ Add Option
2		\$0	☐ Add Option
3		\$0	☐ Add Option
4		\$0	☐ Add Option
5		\$0	☐ Add Option
6		\$0	☐ Add Option
7		\$0	☐ Add Option
8		\$0	☐ Add Option
9		\$0	☐ Add Option
10		\$0	☐ Add Option
		Total:	

TERMS AND CONDITIONS OF SALE
TEREX SOUTH DAKOTA, INC./TEREX UTILITIES, INC.
U.S. and CANADA (except Quebec)

1. Terms and Conditions. The provision by Seller to Buyer of any Equipment or Parts (collectively referred to as "Products") shall be exclusively governed by these Terms and Conditions of Sale ("Terms and Conditions") and Seller's sales order acknowledgement (collectively referred to as "Agreement"). This Agreement cancels and supersedes any and all terms and conditions previously issued by Seller and shall remain in effect unless and until superseded in writing by Seller. Acceptance of an order for Products by Seller shall be deemed to constitute a binding agreement between the parties pursuant to these Terms and Conditions and Buyer agrees that the order may not thereafter be countermanded or otherwise changed without the explicit prior written consent of Seller. No other terms and conditions shall apply, including the terms of any purchase order submitted to Seller by Buyer, whether or not objected to by Seller or whether or not such terms are inconsistent or conflict with or are in addition to these Terms and Conditions. These Terms and Conditions shall be deemed accepted by Buyer if any of the following occurs: (i) if confirmed by Buyer, (ii) if undisputed by Buyer within ten (10) days after receipt, or (iii) if Seller delivers Products to Buyer. Any communication construed as an offer by Seller and acceptance thereof is expressly limited to these Terms and Conditions. The Products are intended for industrial/commercial use by professional contractors and their trained employees and are not intended for use by consumers.

2. Terms of Payments. Payment for Products purchased by Buyer shall be made in accordance with any of the following terms, provided they have been previously arranged with and expressly approved by Seller in writing: (1) cash in advance; (2) confirmed, irrevocable letter of credit established in such amount and form and at such time and at such bank as shall be approved by Seller in respect of each order; (3) credit account purchases for which payment will be due and payable on net thirty (30) day terms, plus service and other charges applicable to past due amounts in accordance with Seller's written notices; or (4) other payment arrangements expressly approved by Seller in writing prior to or at the time the order is placed. If any Buyer credit account purchase is not paid in accordance with Seller's credit payment terms, in addition to any other remedies allowed in equity or by law, Seller may refuse to make further shipments without advance payment by Buyer. Nothing contained herein shall be construed as requiring Seller to sell any Products to Buyer on credit terms at any time, or prohibiting Seller from making any and all credit decisions which it, in its sole discretion, deems appropriate for Seller. Seller shall have the right, at its option, to charge interest on all amounts not paid when due and Buyer agrees to pay such interest calculated on a daily basis, from the date that payment was due until the Seller receives payment in full, at the rate of 1.5% per month or the maximum rate permitted by applicable law. Unless otherwise agreed in writing between Seller and Buyer, Seller may, in its sole discretion, increase or decrease the price of any Product, as Seller deems reasonably necessary, at any time prior to shipment and invoice Buyer for the same. If Buyer orders the chassis through Seller, the chassis payment is due upon receipt of chassis by Seller and the balance owed for the completed unit is due in accordance with agreed upon payment terms. When supplied by Buyer, Seller will inspect the chassis upon receipt and will notify Buyer of any chassis mounted components (including but not limited to fuel tanks, air tanks, battery boxes and exhaust systems) that require relocation. Buyer will be invoiced for such work upon completion of the finished Equipment.

3. Taxes and Duties. Unless otherwise noted, prices quoted do not include taxes or duties of any kind or nature. Buyer agrees that it will be responsible for filing all tax returns and paying applicable tax, duty, export preparation charge and export documentation charge resulting from the purchase of the Products. In addition, in the event any other similar tax is determined to apply to Buyer's purchase of the Products from Seller, Buyer agrees to indemnify and hold Seller harmless from and against any and all such other similar taxes, duties and fees. All prices quoted are U.S. dollars unless otherwise specified. The amount of any present or future taxes applicable to the sale, transfer, lease or use of the Products shall be paid by Buyer; or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate satisfactory to the applicable taxing authority proving that no such tax is due and payable upon such sale, transfer, lease or use.

4. Title, Property, Risk and Delivery. Unless otherwise stated in writing, for all intra-continental United States shipments, all prices and delivery are FCA, point of manufacture (Incoterms 2020); for all other shipments, all prices and delivery are FAS, named port of shipment (Incoterms 2020). Title and all risk of loss or damage to Products shall pass to Buyer upon delivery, as per Incoterms 2020. Any claims for loss, damage or delay in transit must be entered and prosecuted by the Buyer directly with the carrier, who is hereby declared to be the agent of the Buyer. Seller shall not be liable for any delay in performance of this agreement or delivery of the Products, or for any damages suffered by Buyer by reason of delay, when the delay is caused, directly or indirectly, by a force majeure event described in Section 20 herein or any other cause beyond Seller's control. Claims for shortages in shipments shall be deemed waived and released by Buyer unless made in writing within five (5) days after Buyer's receipt of shipment. Seller's responsibility for shipment shall cease upon delivery of the Products to the place of shipment, and all claims occurring thereafter shall be made to or against the carrier by Buyer. Delivery shall generally be 240 to 270 days after receipt by Seller of a signed Order, provided that, where applicable: (1) Seller receives the chassis a minimum of 90 days prior to scheduled delivery, (2) drawings are timely sent by Buyer and the approved drawings are returned to Seller by Buyer by the requested date, (3) all vendor-supplied components and Buyer-supplied accessories are received by Seller by the date necessary to comply with scheduled delivery. Seller shall not be liable for any delay in performance of this agreement or delivery of the Products, or for any damages suffered by Buyer by reason of delay, when the delay is caused, directly or indirectly, by a force majeure event described in Section 20 herein or any other cause beyond

Seller's control. Claims for shortages in shipments shall be deemed waived and released by Buyer unless made in writing within fifteen (15) days after Buyer's receipt of shipment. Seller's responsibility for shipment shall cease upon delivery of the Parts and or Equipment to the place of shipment, and all claims occurring thereafter shall be made to or against the carrier by Buyer.

5. Delays Caused By Buyer. In the event of a delay in shipment or delivery due to delay by Buyer in furnishing delivery instructions, arranging a method of payment satisfactory to Seller, submitting valid import permits or licenses, or any other delay caused by Buyer or at Buyer's request, if the Products are not shipped or delivered within five (5) days from the first date they are ready to be shipped or delivered, then Seller shall be entitled to charge, as compensation, any additional costs incurred related to such delay. If the Products are not shipped or delivered by the date which is ten (10) days from the first date they are ready to be shipped or delivered, then Buyer's order shall be deemed cancelled and Seller may, in its sole discretion, sell such Products to another buyer without any liability or responsibility to Buyer whatsoever. Seller shall have the right to keep payments on account already received from Buyer, and the difference between the sales price (increased by any other and all further costs, including but not limited to attorney's fees and expenses, storage and other costs, and interest accrued thereon) and the price received from another buyer shall constitute a debt of Buyer and bear interest at the same rate set forth in Section 2 herein. Seller shall be entitled to claim for any further damages suffered as a consequence of Buyer's breach of its obligations hereunder.

6. Cancellation. Prior to delivery to place of shipment, a Product order may be cancelled only with Seller's prior consent and upon terms indemnifying Seller from all resulting losses and damages. Seller shall have the right to cancel and refuse to complete a Product order if any term and/or condition governing this agreement is not complied with by Buyer. In the event of cancellation by Seller, or in the event Seller consents to a request by Buyer to stop work or to cancel the whole or any part of any order, Buyer shall, in the event that Seller asks Buyer to do so, make reimbursement to Seller, as follows: (i) any and all work that can be completed within thirty (30) days from date of notification to stop work on account of cancellation shall be completed, shipped and paid in full; and (ii) for work in progress and any materials and supplies procured or for which definite commitments have been made by Seller in connection with the order, Buyer shall pay such sums as may be required to fully compensate Seller for actual costs incurred, plus fifteen percent (15%). Buyer may not cancel any order after Seller's delivery to place of shipment. Orders for "Special" Equipment may not be cancelled after acceptance, except by Seller. Items of "Special" Equipment are those that differ from standard Seller specifications, have a limited market, or incorporate specifications that have been determined for a specific application. Determination of whether an item of Equipment is "Special" shall be made by Seller in its sole discretion.

7. Inspection and Acceptance. Buyer agrees that it shall inspect the Products immediately after receipt and promptly (in no event later than fifteen (15) days after receipt) notify Seller in writing of any non-conformity or defect. Buyer further agrees that failure to give such prompt notice or the commercial use of the Products shall constitute acceptance. Acceptance shall be final and Buyer waives the right to revoke acceptance for any reason, whether or not known by Buyer at the time of such acceptance. The giving of any such notice by Buyer shall automatically cause the provisions of Seller's warranty to apply and govern the rights, obligations and liabilities of the parties with respect to such nonconformity or defect, provided under no circumstances shall rejection give rise to any liability of Seller for incidental or consequential damages or losses of any kind. Seller shall not be bound by any agent's, employee's or any other representation, promise or inducement not set forth herein. Seller's catalogues, technical circulars, price lists, illustrations, drawings and any other similar literature are for Buyer's general guidance only and the particulars contained in them shall not constitute representations by Seller and Seller shall not be bound by them.

8. Warranty for New Products. Seller warrants its new Equipment and Parts manufactured and sold worldwide, to be free, under normal use and service, of any defects in material or workmanship for a period of twelve (12) months from the date of delivery (as limited by Seller's Limited Product Warranty); provided that Buyer sends Seller written notice of the defect within thirty (30) days of its discovery and establishes that: (i) the Equipment has been operated and maintained in strict compliance with Seller's operating and maintenance manuals ; and (ii) the defect did not result in any manner from the intentional or negligent action or inaction of Buyer, its agents or employees and (2) a new machine registration certificate has been completed, signed and delivered to the Seller within thirty (30) days of the Equipment's "in-service" date. If requested by Seller, Buyer must return any defective Product to Seller's manufacturing facility, or other location designated by Seller, for inspection, and if Buyer cannot establish that conditions (i) and (ii) above have been met, then this warranty shall not cover the alleged defect. Failure to give written notice of defect within such period shall be a waiver of this warranty and any assistance rendered thereafter shall not extend or revive it. Accessories, assemblies and components included in the Products of Seller, which are not manufactured by Seller, are subject to the warranty of their respective manufacturers. This warranty shall not cover any item on which serial numbers have been altered, defaced or removed. Maintenance and wear parts are not covered by this warranty and are the sole maintenance responsibility of Buyer. This warranty is limited to the original purchaser or end-user if sold to a distributor, and is not assignable or otherwise transferable without written agreement of Seller. **THIS WARRANTY IS EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE LIMITED WARRANTY CONTAINED HEREIN.** Seller neither assumes nor authorizes any other person to assume for Seller any other liability in connection with the sale of Seller's Products. This

warranty shall not apply to any of Seller's Products or any part thereof which has been subject to misuse, alteration, abuse, negligence, accident, acts of God or sabotage. No action by either party shall operate to extend or revive this limited warranty without prior written consent of Seller.

9. Warranty for Used Equipment. Used Equipment sold hereunder is sold on an "AS IS, WHERE IS, WITH ALL FAULTS" BASIS WITH NO WARRANTIES WHATSOEVER, EXCEPT AS TO TITLE, UNLESS OTHERWISE SPECIFICALLY AGREED IN WRITING BY BUYER AND SELLER. SELLER ASSUMES NO RESPONSIBILITY FOR THE CONDITION, SAFETY, LEGAL COMPLIANCE, OR USABILITY OF THE USED EQUIPMENT AND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE USED EQUIPMENT INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER MAKES NO REPRESENTATION OR WARRANTY REGARDING THE CONDITION OF THE USED EQUIPMENT, NOR THE SUFFICIENCY OF ANY WARNINGS, INSTRUCTIONS OR MANUALS PROVIDED WITH THE USED EQUIPMENT. Seller recommends and Buyer acknowledges that Buyer should contact the original manufacturer to obtain all available information for the used Equipment, including but not limited to product manuals, warnings, safety bulletins, recall notices, and instructional placards before using the used Equipment. Seller shall not be responsible for providing such information. Buyer agrees not to assert any claims against Seller with respect to the used Equipment or its use. Buyer agrees that it shall inspect the used Equipment prior to issuance of a purchase order for such Equipment and acknowledges that it is not relying upon any photographs, images, videos, representations, statements or other assertions made by Seller with respect to the used Equipment's condition, but is relying upon its own knowledge and/or inspection of the used Equipment.

10. Remedies for Breach. IN THE EVENT OF ANY BREACH OF THE WARRANTY BY SELLER, THE PARTIES AGREE THAT SELLER'S LIABILITY SHALL BE LIMITED EXCLUSIVELY TO THE REMEDIES OF REPAIR OR REPLACEMENT (AT SELLER'S SOLE DISCRETION) OF ANY DEFECTIVE EQUIPMENT COVERED BY THE WARRANTY. In no event shall any repair or replacement of any defective equipment covered by the Seller's warranty extend the length of the warranty beyond the period specified in Section 8 herein.

11. Limitation of Liability. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, SELLER AND ITS AFFILIATES SHALL NOT BE LIABLE FOR, AND SPECIFICALLY DISCLAIM, ANY LIABILITY FOR ANY: (A) LOST PROFITS AND/OR BUSINESS INTERRUPTION (WHETHER DIRECT OR INDIRECT); AND (B) INDIRECT, INCIDENTAL, CONSEQUENTIAL (WHETHER DIRECT OR INDIRECT) OR OTHER DAMAGES OR LOSSES OF ANY KIND WHATSOEVER, including, without limitation, labor costs, lost profits, loss of use of other equipment, third party repairs, personal injury, emotional or mental distress, improper performance or work, penalties of any kind, loss of service of personnel, or failure of Products to comply with any federal, state, provincial or local laws, regardless of whether arising from a breach of contract, or warranty, legal claims or otherwise. **Nothing in this Section shall operate to exclude Seller's liability for death or personal injury when directly related to Seller's negligent act or omission.**

12. Limitation of Actions. Any action for breach of this agreement must be commenced within one (1) year after the cause of action has accrued.

13. Specification Changes. In the event Seller incurs additional expense because of changes in specifications or drawings previously approved by Buyer, or in the event Seller is required to modify the ordered Equipment, perform any additional work or supply any additional Products, the additional expense shall be added to the purchase price. Buyer must submit to Seller a revised purchase order specifying any and all requested changes. Upon receipt of Buyer's revised purchase order, Seller shall have the right, in its sole discretion, to accept or reject any changes in specifications requested by Buyer.

14. Trade-in Offers. Trade-in offers are subject to Seller's inspection and acceptance of the equipment, which must have been maintained to U.S. Department of Transportation operating and safety standards. All accessories on the equipment, including without limitation jibs, winches, pintle hooks and trailer connectors, must remain with the equipment unless otherwise agreed by Seller and Buyer in writing. Seller reserves the right to cancel any trade-in offers or agreements if these conditions are not met, or if Buyer has misrepresented any information about the trade-in unit.

15. Insurance. Until the purchase price of any Products is paid in full, the Buyer shall provide and maintain insurance equal to the total value of the Equipment delivered hereunder against customary casualties and risks; including, but not limited to fire and explosion, and shall also insure against liability for accidents and injuries to the public or to employees, in the names of Seller and Buyer as their interest may appear, and in an amount satisfactory to Seller. If the Buyer fails to provide such insurance, it then becomes the Buyer's responsibility to notify the Seller so that the Seller may provide same; and the cost thereof shall be added to the contract price. All loss resulting from the failure to affect such insurance shall be assumed by the Buyer.

16. Patents, Copyrights, Trademarks, Confidentiality. No license or other rights under any patents, copyrights or trademarks owned or controlled by Seller or under which Seller is licensed are granted to Buyer or implied by the sale of Products hereunder. Buyer shall not identify as genuine products of Seller products purchased hereunder which Buyer has treated, modified or altered in any way, nor shall Buyer use Seller's trademarks to identify such products; provided, however, that Buyer may identify such products as utilizing, containing or having been manufactured from genuine products

of Seller as treated, modified or altered by Buyer or Buyer's representative, upon prior written approval of Seller. All plans, photographs, designs, drawings, blueprints, manuals, specifications and other documents relating to the business of Seller ("Information") shall be and remain the exclusive property of Seller and shall be treated by Buyer as confidential information and not disclosed, given, loaned, exhibited, sold or transferred to any third party without Seller's prior written approval; provided, however, that these restrictions shall not apply to Information that Buyer can demonstrate: (a) at the time of disclosure, is generally known to the public other than as a result of a breach of this Agreement by Buyer; or (b) is already in Buyer's possession at the time of disclosure by from a third party having a right to impart such Information.

17. Default and Seller's Remedies. In the event of default by Buyer, all unpaid sums and installments owed to Seller, shall, at Seller's sole option, become immediately due and payable without notice of any kind to Buyer. In addition to its right of acceleration, Seller may pursue any and all remedies allowed by law or in equity, including but not limited to any and all remedies available to it under the Delaware Uniform Commercial Code. In addition to the foregoing, and not in limitation thereof, Seller shall have the right to set off any credits or amounts owed to Buyer against any amounts owed by Buyer to Seller.

18. Indemnification by Buyer. Buyer hereby agrees to indemnify, release, defend and hold harmless Seller, its directors, officers, employees, agents, representatives, successors, and assigns against any and all suits, actions or proceedings at law or in equity (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) and from any and all claims demands, losses, judgments, damages, costs, expenses or liabilities, to any person whatsoever (including Buyer's and Seller's employees or any third party), or damage to any property (including Buyer's property) arising out of or in any way connected with the performance or the furnishing of Products under this agreement, regardless of whether any act, omission, negligence (including any act, omission or negligence, relating to the manufacture, design, repair, erection, service or installation of or warnings made or lack thereof with respect to any Products furnished hereunder) of Seller, its directors, officers, employees, agents, representatives, successors or assigns caused or contributed thereto. If Buyer fails to fulfill any of its obligations under this paragraph or this agreement, Buyer agrees to pay Seller all costs, expenses and attorney's fees incurred by Seller to establish or enforce Seller's rights. The provisions of this paragraph are in addition to any other rights or obligations set forth in this agreement.

19. Installation. Unless otherwise expressly agreed in writing, Buyer shall be solely responsible for the installation and erection of the Products purchased. Although Seller may in some cases provide a serviceman, data and drawings to aid Buyer with installation or start-up, Seller assumes no responsibility for proper installation or support of any Products when installed and disclaims any express or implied warranties with respect to such installation and support. Notwithstanding whether data and drawings are provided or a serviceman aids in the installation, Buyer shall indemnify and hold Seller harmless and at Seller's request, defend Seller from all claims, demands or legal proceedings (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) which may be made or brought against Seller in connection with damage or personal injury arising out of said installation or start-up.

20. Force Majeure. Seller shall not be liable to Buyer or be deemed to be in breach of this agreement by reason of any delay in performing, or any failure to perform, any of Seller's obligations in relation to the Products if the delay or failure was due to any cause beyond the reasonable control of Seller including (without limitation) strike, lockout, riot, civil commotion, fire, accident, explosion, tempest, act of God, war, epidemic, stoppage of transport, terrorist activity, supply shortage or changes in government, governmental agency, laws, regulations or administrative practices.

21. Anti-Corruption; Export Controls; No Boycotts. Buyer agrees that it shall, and that any party retained or paid by the Buyer ("Retained Party") shall, comply with all applicable laws including, but not limited to, laws prohibiting public corruption and commercial bribery. Buyer further agrees that it shall, and that any Retained Party shall, comply with all applicable export controls, economic sanctions, embargoes and regulations regarding the export, re-export, shipment, distribution and/or sale of Products, technology, information or warranty related services. Buyer further agrees that it shall not, and any Retained Party shall not, export or re-export Products, technology, information or warranty related services directly or with its knowledge indirectly into Iran, Sudan, Cuba, Syria, North Korea, the Crimea Region of the Ukraine or Russia without Buyer first obtaining written approval from Seller. Failure to comply strictly with this section and all applicable laws, regulations and licensing/approval requirements shall be grounds for immediate termination of this agreement by Seller. Notwithstanding anything to the contrary contained in any agreement between the Buyer and Seller or in any other document or agreement relating to the Products sold hereunder, Seller will not comply with requests related to the boycott of any country or other jurisdiction, except to the extent such boycott is required by or otherwise not inconsistent with United States law.

22. Telematics. If a telematics system is included with the Equipment, the telematics system is administered by a third party ("Teleservice Provider") and collects a range of operational data about the Equipment including, but not limited to, usage, performance and reliability. Buyer consents to Seller's obtaining such data from the Teleservice Provider for warranty, product improvement, marketing and customer support purposes and to Seller's management and reporting of data (personal and non-personal) about the Equipment including, but not limited to, fuel consumption, up/down times, operation, defects, parts replacement, movement and location. Buyer shall, to the extent required by applicable law, obtain consent from its customers and/or any third party for Seller and/or third parties to provide teleservices and data to Buyer. Buyer shall

comply with all applicable laws relating to the provision of teleservices. Buyer agrees to be bound by the current version of the Terex Telematics Terms of Use at <https://www.terex.com/en/products/telematics-tou>.

23. Construction and Severability. These Terms and Conditions of Sale constitute the entire agreement between the parties regarding the subject matter hereof and shall be construed and enforced in accordance with the laws of Delaware. The United Nations Convention on Contracts for the International Sale of Goods (1980) (CISG) shall not apply. The invalidity or unenforceability of any provisions of this agreement shall not affect any other provision and this agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

24. Jurisdiction. The parties agree that the proper and exclusive forum and venue in all legal actions brought to enforce or construe any provisions herein shall be in United States District Court, District of Delaware or, if federal jurisdiction is lacking in such action, in New Castle County Superior Court in Delaware.

25. No Assignment. No rights arising under this agreement may be assigned by the Buyer unless expressly agreed to in writing by the Seller.

26. No Set-off. Buyer shall have no right to set-off any amounts it may owe Seller against amounts Seller may owe Buyer under this or any other agreement between Buyer and Seller.

27. Miscellaneous. Buyer represents that: (i) it is solvent and has the financial ability to pay for the Equipment and Parts purchased hereunder and (ii) it has all requisite right, power and authority to perform its obligations under this agreement.

Buyer's Initials: _____



LIMITED PRODUCT WARRANTY

TEREX Utilities, Inc. and TEREX South Dakota, Inc. (each a "Seller"), as to the equipment manufactured by each respective company, warrants its new equipment and parts manufactured and sold worldwide to be free, under normal use and service, of any defects in manufacture or materials for a period of **12 months from date of delivery to the first end user, but in no event longer than 18 months from date of shipment from the factory**; provided that (1) Seller receives written notice of the defect within thirty (30) days of its discovery and Buyer establishes that (i) the equipment has been maintained and operated within the limits of rated and normal usage; and (ii) the defect did not result in any manner from the intentional or negligent action or inaction by Buyer, its agents or employees, and (2) a new machine registration certificate has been completed and received by Seller within thirty (30) days of the equipment's "in-service" date. If requested by Seller, Buyer must return the defective equipment to Seller's manufacturing facility, or other location designated by Seller, for inspection, and if Buyer cannot establish that conditions (1) (i) and (1) (ii) above have been met, then this warranty shall not cover the alleged defect.

Seller's obligation and liability under this warranty is expressly limited to, at Seller's sole option, repairing or replacing, with new or remanufactured parts or components, any part which appears to Seller upon inspection to have been defective in material or workmanship. Such parts shall be provided at no cost to the owner, FOB Seller's parts facility (Incoterms 2010). If requested by Seller, components or parts for which a warranty claim is made shall be returned to Seller at a location designated by Seller. All components and parts replaced under this warranty become the property of Seller. This warranty shall be null and void if parts (including wear parts) or attachments other than genuine OEM Seller parts or approved attachments are used in or attached to the equipment.

Accessories, assemblies and components included in Seller's equipment, which are not manufactured by Seller, are subject to the warranty of their respective manufacturers. Normal maintenance, adjustments, or maintenance/wear parts, are not covered by this warranty and are the sole maintenance responsibility of Buyer.

The following structural members have a lifetime parts only warranty for the original Buyer after date of shipment from Seller: sub frame, pedestal, turntable, and boom. Replacement of fiberglass jibs, seals, gaskets, hoses, and exterior coating is not covered under the lifetime warranty. The lifetime warranty requires an annual service inspection of the equipment by an authorized distributor of Seller. The sub frame, pedestal, turntable, and boom shall have a 5 year parts only warranty if the annual service inspection is performed by an approved entity other than an authorized distributor of Seller. All replacement parts must be genuine OEM Seller parts.

SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AS TO THE EQUIPMENT AND PARTS IT SUPPLIES.

No employee or representative of Seller is authorized to modify this warranty unless such modification is made in writing and signed by an authorized officer of Seller. Seller's warranty is continuous for the stated period, and "stopping and restarting" such period is not permitted.

Seller's obligation under this warranty shall not include duty, taxes, environmental fees, including without limitation, disposal or handling of tires, batteries, petrochemical items, or any other charges whatsoever. Seller shall not be liable for indirect, incidental, or consequential damages, even if advised of the possibility of such damages.

Improper maintenance, improper use, abuse, improper storage, operation beyond rated capacity, operation after discovery of defective or worn parts, accident, sabotage or alteration or repair of the equipment by persons not authorized by Seller shall render this warranty null and void. Seller reserves the right to inspect the installation of the product and review maintenance procedures to determine if the failure is covered under this warranty.

Parts Warranty: Seller warrants the parts ordered from the Seller to be free of defects in materials or workmanship for either (1) a period of 12 months after date of shipment from the factory, or (2) the balance of the remaining new equipment warranty, whichever occurs first. With respect to parts ordered from Seller for equipment for which the warranty has expired, Seller warrants such parts to be free of defects in materials or workmanship for a period of 12 months after date of shipment from the factory.

NO TRANSFERABILITY OF WARRANTY: This warranty is limited to the original purchaser or original end-user if sold to a distributor, and is not assignable or otherwise transferable without the written agreement of Seller.

ITEMS NOT COVERED BY WARRANTY

The following listed items, which are not exhaustive, are **NOT** covered under this warranty:

1. Items sold by any individual, corporation, partnership or any other organization or legal entity that is not authorized by Seller to distribute its equipment.
2. Inbound freight, duty and taxes for replacement components or outbound freight, duty, and taxes for any part requested as a warranty return.
3. Components which are not manufactured by Seller or its affiliates. Such components may include, but are not limited to, chassis, engines, batteries, tires, customer-supplied products, transmissions, air compressors, and axles.
4. Replacement of a complete assembly that is field repairable by the replacement or repair of defective part(s) within the assembly. Seller has the option to repair or replace any defective part or assembly.
5. Wear parts and maintenance services including, but not limited to: lamps, lenses, seals, gaskets, hoses, filters, breathers, belts, nozzles, friction plates, glass, clutch and brake linings, wire rope, nuts and fittings, exterior coatings, proper tightening of bolts, adding or replacing of fluids, adjustments of any kind, services, inspections, diagnostic time, travel time and supplies such as hand cleaners, towels and lubricants.
6. Damage caused by carrier handling. Any such claim for damage should be filed immediately with the respective carrier.
7. Repairs, work required or parts exposed as the result of age, storage, weathering, lack of use, demonstration use, or use for transportation of corrosive chemicals.
8. Damage resulting to the equipment or parts should the owner or operator continue to operate the equipment after it has been noted that a failure has occurred.
9. Damage caused by, or labor or other costs related to, work performed by personnel not authorized by Seller to service the equipment.

IN NO EVENT SHALL SELLER, OR ANY AFFILIATE, SUBSIDIARY OR DIVISION THEREOF BE LIABLE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES RESULTING FROM ANY BREACH OF WARRANTY, REPRESENTATION OR CONDITION, EXPRESS OR IMPLIED, OR ANY TERMS OF THIS WARRANTY, OR ANY BREACH OF ANY DUTY OR OBLIGATION IMPOSED BY STATUTE, CONTRACT, TORT, COMMON LAW OR OTHERWISE (WHETHER OR NOT CAUSED BY THE NEGLIGENCE OF THE SELLER, ITS EMPLOYEES, AGENTS OR OTHERWISE), INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOST PROFITS OR REVENUES, LABOR OR EMPLOYMENT COSTS, LOSS OF USE OF OTHER EQUIPMENT, DOWNTIME OR HIRE CHARGES, THIRD PARTY REPAIRS, IMPROPER PERFORMANCE OR WORK, LOSS OF SERVICE OF PERSONNEL, LOSS OF CONTRACTOR OPPORTUNITY AND PENALTIES OF ANY KIND, PERSONAL INJURY, EMOTIONAL OR MENTAL DISTRESS, OR FAILURE OF EQUIPMENT TO COMPLY WITH ANY APPLICABLE LAWS. The Seller's liability to the Buyer shall not in any event exceed the purchase price of the equipment.

THIS WARRANTY IS EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED AND ALL OTHER STATUTORY, CONTRACTUAL, TORTIOUS AND COMMON LAW OBLIGATIONS OR LIABILITY ON SELLER'S PART ARE HEREBY EXPRESSLY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE LIMITED WARRANTY CONTAINED HEREIN. Seller neither assumes nor authorizes any other person to assume for Seller any other liability in connection with the sale of Seller's equipment. In the event that any provision of this warranty is held unenforceable for any reason, the remaining provisions shall remain in full force and effect.



Terex Utilities, Inc.
3140 15th Ave SE, Watertown, SD 57201
Phone: 605-882-4000 Fax: 605-882-1842

04/14/2022

CITY OF BENTONVILLE
3200 SW MUNICIPAL DR
BENTONVILLE, AR 72712
Attention: DOUG CHAREST

Phone: (479)271-5985

Qty. Description

UNIT

- 1 One (1) new Terex Hi-Ranger TL41 Articulating / Telescoping Aerial Device providing a working height of 47.0 ft (14.3 m).
Unit will be mounted behind the cab.

Design Criteria:

* Design criteria is in accordance with current industry and engineering standards applicable and accepted for structural and hydraulic design.

Aerial device is designed as a Category C machine in accordance and is dielectrically tested and rated for operation on systems up to 46 Kv phase to phase per ANSI/SIA A92.2-2015

Hydraulic System:

- * Full pressure open center hydraulic system.
- * Hydraulic hoses are equipped with permanent type fittings.

Miscellaneous:

- * All metallic components of the complete aerial device are powder coat white.
- * The fiberglass upper boom, boom inserts, platforms and covers are white.
- * Two complete manuals providing operation and maintenance procedures and a replacement parts listing.
- * Warning decals provided with unit.

- 1 Pedestal with 20 gallon integral tank.
 - * The pedestal is designed with access holes for maintenance of hydraulic plumbing.
 - * An internal 20-gallon hydraulic oil reservoir provided with a 60-mesh filler screen baffles gauge. 100 mesh suction screen with bypass clean out access hole and dip stick.

Sight Gauge With Thermometer:

- * Mounted within an aluminum body to protect sight tube.
- * Thermometer has a range of 0-300 degrees Fahrenheit.

- 1 Turntable and Lower Boom Assembly:

Lower Boom:

- * Filament wound high strength fiberglass insert providing an insulation gap.
- * The lower boom articulation is from 0 to 87 degrees.

Qty. Description**Lower Controls:**

* Individual control levers are located in an accessible location on the turntable.

Rotation:

* Self-locking worm gear rotation drive is provided and equipped with bi-directional motor.

- 1 Boom Tip with 4 Function Controls, Platform Rotator, Platform Lifter and side mounted simplified compact hydraulic extend underload jib.

Upper Controls: "Control-Plus" single stick controller.

* Enable lever must be actuated before operation.

The side mount platform rotator offering 90 degrees of hydraulic rotation.

The platform lifter provides 24" of vertical platform lift.

Hydraulic Platform Tilt is provided at platform and lower controls.

Engine Stop/Start controlled at platform and lower controls.

Upper Boom:

* Filament wound high strength fiberglass boom providing an insulation gap.

Simplified, Compact Hydraulic Extend Under Load Jib and Winch:

* Infinite positioning through the 120-degree articulation envelope.

* Load radius of 0 to 65"

* Hydraulic Extension to reposition the jib (no re-pinning required).

* The jib's compact size barely goes below the bottom of the platform

* Includes a self-locking worm gear winch. Includes jib and winch controls at platform controls and winch control at lower controls.

* Includes up to 75' of 1/2" winch rope and hook.

* Maximum jib capacity of 1500 lb.

- 1 Platform capacity rated up to 500-lbs.
- 1 Platform, Side Mount (curbside), 24 x 30 x 42:
 - * Includes two (2) outside access steps with slip-resistant surface.
- 1 Customer Decline Fall Arrest.
- 1 A rigid platform rest provides platform support during road travel.
- 1 Insulated Platform Liner with Step for 24" x 30" x 42" Platform:
 - * Tested at 50 KV AC.
- 1 Vinyl Foam Filled Platform Cover For 24" x 30" Platform:
 - * Water resistance with internal elastic cord around edge.
- 1 Engine Throttle Control:
 - * A two speed engine throttle control is provided at the upper controls.

Qty. Description

* The engine will advance to a pre-set speed when engaged and decrease to idle when disengaged.

1 TOOLS, DUAL

1 Auxiliary Power:

* Allows the operation of any function for a time period limited by battery life.

*Includes 12 volt electric motor for use on a 12 volt chassis.

Note: This includes a switch for activation at pedestal for electric or air function.

1 Continuous And Unrestricted Rotation:

* A hydraulic rotary manifold provides a rotating oil distribution system for continuous and unrestricted rotation.

* A 6 channel electric collector ring is provided as standard.

Boom Stow Protection System:

* Protects against damage from excessive down pressure of the lower boom by cutting off oil supply to the lower boom function.

1 Terex Advanced Chassis Controller:

* Multiplexed system to include: Controller, LCD Screen, Manual and Schematics.

* Standard Options: Diagnostics, Status Screens, Event Log, Hours Meter, Selectable Button Labels, System Alerts and System Test.

* Programmable settings allow installer to customize/select options need for their application.

* Back-up Camera ready.

* Screw terminal-type connections and enclosure to cover connections.

* Recommended on Class 6 and above chassis with multiple outputs

* The PTO hour is standard. The engine hour meter is standard (When available). This is a message we get from the truck Data link. All trucks except Ford give us the Engine hours. So if it's a Ford, we just display PTO hours.

1 Mounting Kit:

* Includes two mounting plates, for angle tie downs and a short subframe.

**** ALTERED FROM STANDARD ****

1 Model 438506 Standard Duty Low Profile A-Frame Outriggers with swivel type stabilizer pads. (438506)

1 Controls For 1-Sets of Outriggers (Open center systems):

* Recessed at rear of truck each side for ease of view for outrigger placement.

* Includes switches and alarm for outrigger in motion alarm.

1 Outrigger Interlock:

* To operate the boom the outriggers must be extended.

1 A boom rest with a automatic latch is provided.

1 Pump for systems requiring 8 gallons per minute:

*Fixed displacement vane pump providing 5 gallons per minute at 725 engine rpm and 8 gallons per minute at 1050 engine rpm with a 128% pto.

Qty. Description

1 American flag displayed on unit.

1 Factory Warranty

** ALTERED FROM STANDARD **

1 .

BODY, INSTALLATION

** BODY INFORMATION **

1 126-inch Steel Service Body & Accessories per attached spec.

1 Install Aerial Device Behind Cab And Install All Associated Components:

* Final test and inspect completed unit including stability and dielectric testing per manufacturers requirements.

1 Hose and fittings to connect the hydraulic system from the oil reservoir to the pump and unit.

1 Platform rest, bottom base

1 Chassis Spring Additions:

* Build up left rear chassis springs to level vehicle.

1 Power take off with indicator light for automatic transmission.

1 DOT Inspection.

1 Set chassis parameters.

1 Back-up alarm to sound when the vehicle is shifted into reverse.

2 Laminated wood outrigger pad 24" x 24" x 2-1/4" with rope handle.

* Includes outrigger pad storage.

1 Pendulum style retainer.

2 Rubber wheel chocks with eye bolt.

2 Pendulum style retainer.

1 Igloo 5 gallon plastic water cask.

1 Mounting bracket for water cask for exterior mounting.

Install on top of first curbside vertical - spigot towards curbside.

2 Wire Holder 6" shaft with a pin and chain keeper.

Qty. Description

Install on platform rest vertical support.

- 1 Grab handles as necessary for 3-point contact.
- 1 Access steps to platform from top of body or flatbed floor.
- 1 Installation of steps included with body:
 - (1) rear access step (StreetSide)
 - (1) curbside access step
- 2 Mud flap with logo 18" tall.
Note: Trim As-Required.
- 1 Under body mounting kit for a pair of mud flaps.
- 1 6" PVC x 102" storage tube with cast ends and mounting brackets.
Install between cab & body - will need to trim to body width.
- 1 Boom rest.
- 1 Peterson LED 7-lamp DOT Lighting Package:
 - * Complies with FMVSS 108.
 - * Includes required lights, junction box and wiring harness.
- 1 Lighted license plate bracket kit with LED light.
- 2 Magnetic Mount Power Strip w/ GFI
 - *Install (1) in each 1st vertical compartment w/ 5-ft of cord.
 - *Wire to inverter
- 1 Dimensions 1800N inverter, 1800W continuous, 120VAC, Up to 15A.
- 2 Inverter Spacer Tube
- 2 Amber strobe light (LED) with 4" tall & 6" dia. lens, and branch guard.
- 1 Whelen 4 corner LED, Amber Strobe Light Kit with 4" grommets.
*Wired into On/Off switch in cab.
- 1 Whelen LED 3.5" White Flash Light. (Pair)
 - *3 LED Clusters, 10 flash pattern.
- 2 Strobe and Golight mounting bracket.
- 2 Golight 20004 LED spotlight, hand held remote and white in color.

Qty. Description

- 1 Truck-Lite 4" round LED work light.
Install on back of pedestal to illuminate cargo area
- 2 Maxxima 13-inch Lightbar
*Install under tailshelf to light up area behind truck.
Terex PN - 65369797
- 1 Tekonsha Voyager electric brake control.
- 1 One pair of rubber dock bumpers at rear.
- 1 Remote engine stop/start And two speed control from rear of vehicle.
- 1 PH5 5 ton pintle hook:
"Pintle hook brackets and attachment methods are designed to meet the associated pintle hook ratings. They are not designed for recovery purposes. If recovery attachments are required, please order the appropriate tow eyes."
- 1 ICC rear bumper.
- 1 6-prong trailer socket.
- 30 Fill with Hydraulic oil for general purpose use.
* Refer to the product maintenance manual for specific type to be used.
- 1 Safety Kit consists of the following:
*10-lb ABC fire extinguisher with the use of 0092099 bracket.
*James King triangle reflector kit.

Install on front of body - streetside
- 1 Pro-Vision backup camera kit:
Note: Camera only, 2.5 inch.

Wire to chassis controller to use screen as rear-view monitor.
- 1 Warn Electric Bumper Winch with Roller assembly:
* 16,500-lb capacity
* 4-way roller
* 7/16" x 90' wire rope
* Remote control with a 12' lead
- 1 Mounting kit on a factory bumper for a Warn electric winch (Gen II)
*Includes mounting kit

Qty. Description

1 Paint body floor with non-skid paint.

1 Paint compartment top with non-skid paint.

CHASSIS

1 Customer Supplied Chassis:

* Along with the purchase order the customer will be required to include a copy of the chassis specification intended for use and the contact information of the supplying chassis dealer. If the chassis specification does not meet minimum requirements for the application additional costs may be incurred to meet those requirements.

* Terex Utilities, Inc. requires a weight study analysis to insure chassis loading and stability.

* Chassis's delivered to the installation facilities that do not meet minimum specification requirements will be noted at time of delivery and a suggested resolution will be provided back to the customer.

* Reference Terex Customer Furnished Chassis Delivery Policy for additional instructions.

SPECIAL CHARGES

1 Delivery to Customer.

**** ADDITIONAL INFORMATION ****

1 Delivery from Factory (Watertown SD) to Bentonville AR.

1 First Article Inspection, Digital

OPTIONS:

ADD

B&G Bodies, Inc.

2925 9th Ave SW
Watertown SD
57201

Quotation Number	13388
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For the attention of	Mike Stolp
----------------------	------------

Customer:	Terex City of Bentonville
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DESCRIPTION

B&G Bodies Inc. 126" Line Body 46 inches high X 94 inches wide.

18 Inch compartment depth.

58 Inch bed area.

28 Inch top of floor to top of body.

24 Inch horizontal compartment height.

12 Ga Wheel Wells Covers.

16 Ga. Galvanneal body materials.

12 Ga. Hot rolled treadplate floor.

12 Ga. Hot rolled treadplate compartment tops.

Stainless Steel Automotive rotary type door latches.

Stainless steel rod and socket type door hinges.

Gas Cylinder door holders on all vertical hinged doors and

Chain stops on horizontals.

* Spring Retainers on Horizontal Doors

Double Panel Body Doors.

Rubber rolled crown type fenders. **(Ship Loose with Cutouts)**

Master door lock system.

LED Rope light compartment lights in all body compartments with Weather Pack Connectors.

* Does not include Boxes or Tailshelf Compartments

* Lights Ship Loose.

Automotive Bulb Type Weatherstripping.

Front bulk head - Bolt on

Shelving / Hooks installed on DUAL Uni-Strut for infinite adjustment.

Streetside Compartmentation:

1st Vertical:

24 Inches wide with Four (4) shelves each with adjustable dividers on 4" centers.

2nd Vertical:

24 Inches wide with Three (3) shelves each with adjustable dividers on 4" centers.

B&G Bodies, Inc.

2925 9th Ave SW

Watertown SD

Horizontal:

54 Inches wide with One (1) shelf with adjustable dividers on 6" centers.

Rear Vertical:

24 Inches wide with Seven (7) locking/swivel type material hooks 2-3-2.

Hotstick Shelf:

126 Inches long with rear dropdown access door.

Curbside Compartmentation:

1st Vertical:

24 Inches wide with Four (4) shelves each with adjustable dividers on 4" centers.

2nd Vertical:

24 Inch wide Lift-up Gripstrut access steps to bed area.

- * Chain Storage

Horizontal:

54 Inches wide with One (1) shelf with adjustable dividers on 6" centers.

Rear Vertical:

24 Inches wide with Seven (7) locking/swivel type material hooks 2-3-2.

SS Top Mounted Box: (Bolt-On / Installed)

One (1) - 126" long X 12" high X 18" wide with Two (2) top opening treadplate access lids.

- * Lift-up handle installed on front edge of box lid.
- * Equipped with Pad lockable type latch and Gas Cylinders
- * Automotive Bulb Type weatherstrip installed around top opening - Ship Loose

CS Top Mounted Box: (Bolt-On / Installed)

One (1) - 78" long X 12" high X 18" wide with One (1) top opening treadplate access lid.

- * Lift-up handle installed on front edge of box lid.
- * Equipped with Pad lockable type latch and Gas Cylinders
- * Automotive Bulb Type weatherstrip installed around top opening - Ship Loose

Ladder Storage: (Bolt-On / Installed)

Horizontal Ladder Rack 126" long 3" high X 19" wide with rear roller and tie down loops.

Subframe Installation:

Install customer supplied subframe, with outriggers.

- * Standard A-Frame Jacks

B&G Bodies, Inc.

2925 9th Ave SW

Watertown SD

Tailshelf:

Treadplate tailshelf 24 inches long X Full width of body x 6 inches high with Underslung compartments with dropdown access doors on streetside and curbside.

* SS Box to be Vented.

7-Lamp light bar installed at rear.

Wheel Chock Storage:

Two built into body wheelwells curbside.

Outrigger Pad Storage: (Bolt-On / Ship Loose)

Two (2) Single Outrigger Pad Storage Brackets - Specify Pad Size.

Cable Step: (Ship Loose)

One (1) Single Cable steps for installing at rear of body.

Access Steps:

One (1) Cable type access step under the side access. (Ship loose)

Tailgate:

Removable Composite wood tailgate 5.5" high X full width of bed area installed at rear of load space.

Removable Composite wood sidegate 5.5" high X full width of step area.

* Includes Pins and Lanyards

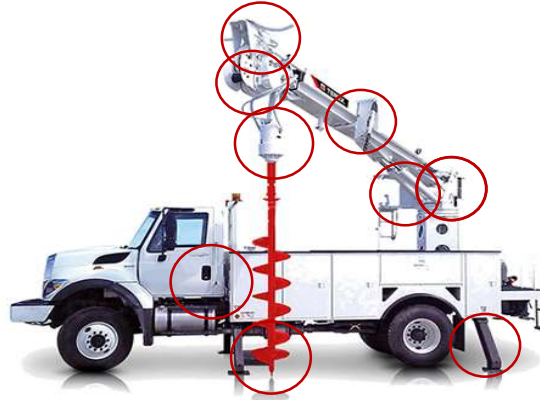
Grab Handles: (Bolt-On / Ship Loose)

Two (2) Bolt-On Type for installing at side access of body.

Two (2) Pool type grab handles for installing top of tailshelf.

Paint:

Finish Paint Body and Inside of compartments Taffeta White.



Fleet Maintenance and Inspection Agreements

Contact us **NOW** for pricing! 1-210-476-7768

- We cater to your needs through pay-as-you-go, customized service agreements.
- We can cover your entire fleet, for all manufacturers!
- Our inspections provide a trusted and certified review of your unit.
- Maintain your Terex Limited Lifetime Structural Warranty eligibility by utilizing Terex Services for your maintenance needs!

Annual Inspection	Basic	Silver	Gold	Platinum
(4 Options)	✓	✓	✓	✓
+ Dielectric Test		✓	✓	✓
+ Lubrication & Filters			✓	✓
+ Rotation Bolt Torque Checks*				✓

180-Day Inspection	Basic	Silver	Gold
(3 Options)	✓	✓	✓
+ Lubrication & Filters		✓	✓
+ Rotation Bolt Torque Checks*			✓

90-Day Inspection	Basic	Silver
(2 Options)	✓	✓
+ Lubrication & Filters*		✓

We come to you!



Or you can come to us!



Get preferential travel rates by including your entire fleet!

•• Be sure to select your preferred inspection level to be quoted.

TEREX SERVICE CENTERS KEEP YOUR EQUIPMENT WORKING



*Terex recommends selecting to comply with ANSI/OSHA requirements.

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V78.2107121151

Preventive Maintenance and Inspection Program



TL41

TL Series Non-Overcenter Telescoping Articulating Aerial Device

5
1

= number of years of preventive maintenance service in the quote
= quantity of units to include in the quote



Include field service travel time (otherwise units will be serviced at a branch)

Please indicate customer location:

East of Colorado Mountains

Preventive Maintenance Packages, Single Unit

Basic	Silver	Gold	Platinum	Custom
- Yearly visual inspection and operational test of all critical components.* <i>* NOTE- Basic package by itself does not qualify as the required annual inspection under the Terex Limited Product Warranty</i>	- Yearly visual inspection and operational test of all critical components. - Annual preventive maintenance as defined in maintenance manual, including the following: - Torque checking of rotation bolts, drift test, lubrication, hydraulic oil test, dielectric test - Replacement hydraulic oil filters and lubricant - Qualifies as the required annual inspection under the Terex Limited Product Warranty	- Yearly visual inspection and operational test of all critical components. - Annual preventive maintenance as defined in maintenance manual, including the following: - Torque checking of rotation bolts, drift test, lubrication, hydraulic oil test, dielectric test - Replacement hydraulic oil filters and lubricant - Qualifies as the required annual inspection under the Terex Limited Product Warranty - 90 day, 180 day, and 270 day inspection and preventive maintenance - Replacement hydraulic oil filters and lubricant	- Yearly visual inspection and operational test of all critical components. - Annual preventive maintenance as defined in maintenance manual, including the following: - Torque checking of rotation bolts, drift test, lubrication, hydraulic oil test, dielectric test - Replacement hydraulic oil filters and lubricant - Qualifies as the required annual inspection under the Terex Limited Product Warranty - 90 day, 180 day, and 270 day inspection and preventive maintenance - Replacement hydraulic oil filters and lubricant - 5 years preventive maintenance - Removal and inspection of leveling chains and insulator rods** <i>** Not required for XT PROs, OPTIMAS, units equipped with Extended Life leveling chains, or units not equipped with leveling chains.</i>	Package includes: See custom package configurator
Standard service price: \$4,300 Your package price: \$3,723	Standard service price: \$6,201 Your package price: \$5,369	Standard service price: \$17,102 Your package price: \$14,808	Standard service price: \$17,102 Your package price: \$14,808	Standard service price: \$10,752 Your package price: \$9,310
You save: \$577	You save: \$832	You save: \$2,293	You save: \$2,293	You save: \$1,442

Select your package: ☐ Basic (customer declines, among others, torque check of critical fasteners)

☐ Silver ☐ Gold ☐ Platinum ☐ Custom

Customer confirms selection of the maintenance package indicated for the price and duration specified. Customer accepts and agrees to the attached Terex Terms and Conditions of Sale, which govern this transaction. In the event of early cancellation of this Agreement, Customer agrees that Terex shall be entitled to retain as liquidated damages, and not as a penalty, any fees paid in advance, which the parties agree reasonably approximate Terex's actual damages.

Customer signature: _____

Preventive Maintenance and Inspection Program

Custom Package Configurator

Product Code:

TL41 ▼

TL Series Non-Overcenter Telescoping Articulating Aerial Device



5 ▼ = number of years of service

1 ▼ = quantity of units to include in the quote

Include the following periodic Preventive Maintenance:

- ☐ 90 Days (360 Hours)
- ☒ 180 Days (720 Hours)
- ☐ 270 Days (1,080 Hours)
- ☒ 12 Months (1,050 Hours)
- ☒ Dielectric Test (Yearly)
- ☐ 5 Years (5,250 Hours)

☒ Include field service travel time

Please indicate customer location:

East of Colorado Mountains ▼

Custom

Standard service price:

\$10,752

Your package price:

\$9,310

You save:

\$1,442

Visit us at TEREX.com

PREVENTIVE MAINTENANCE AND INSPECTION PROGRAM

A SCOPE OF SERVICES

- 1 For each Terex Utilities equipment unit specified in section C below, Service Provider will provide, annually, for the Basic Package: Visual inspections and operational tests; for the Silver Package: Annual preventive maintenance, dielectric test, lubricant and hydraulic filter; for the Gold Package: 90-Day preventive maintenance (except for XT PRO), 180-Day preventive maintenance, 270-Day preventive maintenance (except for XT PRO), Annual preventive maintenance, dielectric test; for the Platinum Package: 90-Day preventive maintenance (except for XT PRO), 180-Day preventive maintenance, 270-Day preventive maintenance (except for XT PRO), Annual preventive maintenance, dielectric test, 5 years preventive maintenance ; for the Custom Package: 180-Day preventive maintenance, Annual preventive maintenance, dielectric test, lubricant and hydraulic filter, ; services will be provided for 5 years, provided this Agreement has not expired or been terminated. Such Maintenance will be consistent with the applicable service manual for each Equipment unit. The commencement date for such Maintenance for the Equipment will be the on the equipment delivery date. Service Provider will have no obligation to perform Maintenance on any Equipment after termination or expiration of this Agreement.
- 2 The Maintenance will be conducted at the Designated Service Location specified in section C below. Maintenance outside such location will be performed at an additional fee to be agreed by the parties in advance. Customer shall provide a safe work area for the Maintenance, with electric power, water, waste disposal, and access provisions. Vehicle must be provided free and clear of debris to allow technician safe access to the equipment controls and pedestal area. Service Provider will provide periodic reports to Customer of the Maintenance that has been performed.
- 3 Maintenance and Inspection of the Equipment will be scheduled by Customer at least five (5) business days in advance. The parties will cooperate to ensure advance notice is provided to Service Provider of any additional service that may be requested.
- 4 In the event an Equipment unit does not meet the Inspection criteria because of needed repairs ("Repairs"), Service Provider will provide an estimated cost for such Repairs. Repairs will be performed upon Customer's approval and issuance of a purchase order. The Repairs must be performed prior to Service Provider acknowledging that the Inspection is completed.
- 5 Maintenance, Inspections, and Repairs will be performed by Service Provider on the Equipment within the hours of 7:00 a.m. to 5:00 p.m. on normal business days (excluding weekends and public holidays). In the event Customer schedules Maintenance, Inspections, and/or Repairs outside of such hours, or on weekends or public holidays, the following additional fees will be charged: \$120.00 an hour, or for prorated portions of an hour depending on the time of completion. Fees will be billed from the time the Service Provider reaches the jobsite.
- 6 In the event Customer proposes changes to the Scope of Services stated herein, Service Provider reserves the right to renegotiate the fee agreed between the parties.

B FEE SCHEDULE

For the Basic Package: \$3,723; for the Silver Package: \$5,369; for the Gold Package: \$14,808; for the Platinum Package: \$14,808; for the Custom Package: \$9,310; for 5 years of service, with payment by Customer to Service Provider due upon signing of this Agreement.

C LIST OF EQUIPMENT UNITS TO BE INSPECTED AND MAINTAINED

The following equipment, listed by Serial Number and Model, is included under this Agreement:

Equipment Model: TL41

Equipment Serial Number(s):

This document will be supplemented with serial numbers for the units once they are available

Designated Service Location:

CUSTOMER'S ADDRESS

("Seller")

TERMS AND CONDITIONS OF SALE

1. Terms and Conditions. The provision by Seller to Buyer of any Equipment or Parts (collectively referred to as "Products") and field labor, reconditioning, repair, maintenance and inspection services (collectively referred to herein as "Services") shall be exclusively governed by these Terms and Conditions of Sale ("Terms and Conditions") and Seller's sales order (collectively referred to as "Agreement"). This Agreement cancels and supersedes any and all terms and conditions previously issued by Seller and shall remain in effect unless and until superseded in writing by Seller. Acceptance of an order for Products or Services by Seller shall be deemed to constitute a binding agreement between the parties pursuant to these Terms and Conditions and Buyer agrees that the order may not thereafter be countermanded or otherwise changed without the explicit prior written consent of Seller. No other terms and conditions shall apply, including the terms of any purchase order submitted to Seller by Buyer, whether or not objected to by Seller or whether or not such terms are inconsistent or conflict with or are in addition to these Terms and Conditions. These Terms and Conditions shall be deemed accepted by Buyer if any of the following occurs: (i) if confirmed by Buyer, (ii) if undisputed by Buyer within ten (10) days after receipt, or (iii) if Seller delivers Products or Services to Buyer. Any communication construed as an offer by Seller and acceptance thereof is expressly limited to these Terms and Conditions. The Products are intended for industrial/commercial use by professional contractors and their trained employees and are not intended for use by consumers.

2. Terms of Payments. Payment for Products or Services purchased by Buyer shall be made in accordance with any of the following terms, provided they have been previously arranged with and expressly approved by Seller in writing: (1) cash in advance; (2) confirmed, irrevocable letter of credit established in such amount and form and at such time and at such bank as shall be approved by Seller in respect of each order; (3) credit account purchases for which payment will be due and payable on net thirty (30) day terms, plus service and other charges applicable to past due amounts in accordance with Seller's written notices; or (4) other payment arrangements expressly approved by Seller in writing prior to or at the time the order is placed. If any Buyer credit account purchase is not paid in accordance with Seller's credit payment terms, in addition to any other remedies allowed in equity or by law, Seller may refuse to make further shipments without advance payment by Buyer. Nothing contained herein shall be construed as requiring Seller to sell any Products or Services to Buyer on credit terms at any time, or prohibiting Seller from making any and all credit decisions which it, in its sole discretion, deems appropriate for Seller. Seller may charge interest on all amounts not paid when due and Buyer agrees to pay such interest calculated on a daily basis, from the date that payment was due until the Seller receives payment in full, at the rate of 1.5% per month or the maximum rate permitted by applicable law. Seller shall be entitled to an equitable adjustment in the price of Products or Services in order to account for increases in the cost to Seller of labor or materials, or in the event of unanticipated or unforeseen circumstances.

3. Taxes and Duties. Unless otherwise specified, prices quoted do not include taxes or duties of any kind or nature. Buyer agrees that it will be responsible for filing all tax returns and paying applicable tax, duty, export preparation charge and export documentation charge resulting from the purchase of any Products or Services. In addition, in the event any other similar tax is determined to apply to Buyer's purchase of any Products or Services from Seller, Buyer agrees to indemnify and hold Seller harmless from and against any and all such other similar taxes, duties and fees. All prices quoted are U.S. DOLLARS unless otherwise specified. The amount of any present or future taxes applicable to the sale, transfer, lease or use of any Products shall be paid by Buyer; or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate satisfactory to the applicable taxing authority proving that no such tax is due and payable upon such sale, transfer, lease or use.

4. Title, Risk, Transportation and Delivery. Unless otherwise stated in writing, all prices and delivery are FCA, Seller's Premises (Incoterms 2010). Title and all risk of loss or damage to Products shall pass to Buyer upon delivery, as per Incoterms 2010. Any claims for loss, damage or delay in transit must be entered and prosecuted by the Buyer directly with the carrier, who is hereby declared to be the agent of the Buyer. In the event delay in shipment of Products is caused by Buyer's failure to furnish necessary information with respect to data and details for Buyer's specifications, Seller, may, in its sole discretion, extend the date of shipment for a reasonable time. In the event delay in shipment is caused by Buyer or at Buyer's request, and there are Products that are not shipped within ten (10) days from the first date they are ready to be shipped, Seller may, in its sole discretion, sell such Products to another buyer without any liability or responsibility to Buyer whatsoever. All payments shall be made in accordance with the terms of the applicable invoice. In addition, storage charges due to delay in furnishing delivery instructions, arranging and establishing a method of payment satisfactory to Seller, or submitting valid import permits or licenses, or any other delay caused by Buyer or at Buyer's request, will be for the account of Buyer. **SELLER SHALL NOT BE LIABLE FOR ANY LOSS OF USE OR FOR ANY OTHER INDIRECT, CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES OR LOSSES DUE TO DELAY IN SCHEDULED DELIVERY.** Claims for shortages in shipments shall be deemed waived and released by Buyer unless made in writing within five (5) days after Buyer's receipt of shipment. Seller's responsibility for shipment shall cease upon delivery of the Products to the place of shipment, and all claims occurring thereafter shall be made to or against the carrier by Buyer.

5. Cancellation. Prior to delivery to place of shipment, a Products order may be cancelled only with Seller's prior written consent and upon terms indemnifying Seller from all resulting losses and damages. Seller shall have the right to cancel and refuse to complete a Products or Services order if any term and/or condition governing this agreement is not complied with by Buyer. In the event of cancellation by Seller, or in the event Seller consents to a request by Buyer to stop work or to cancel the whole or any part of any order, Buyer shall make reimbursement to Seller, as follows: (i) any and all work that can be completed within (30) days from date of notification to stop work on account of cancellation shall be completed, shipped and paid in full; and (ii) for work in progress and any materials and supplies procured or for which definite commitments have been made by Seller in connection with the order, Buyer shall pay such sums as may be required to fully compensate Seller for actual costs incurred, plus fifteen percent (15%). Buyer may not cancel any order after Seller's delivery to place of shipment. Orders for "Special" Equipment may not be cancelled after acceptance, except by Seller. Items of "Special" Equipment are those that differ from standard Seller specifications, have a limited market, or incorporate specifications that have been determined for a specific application. Determination of whether an item of Equipment is "Special" shall be made by Seller in its sole discretion.

6. Inspection and Acceptance. Buyer agrees that it shall inspect the Products or Services immediately after receipt of Products or completion of Services and promptly notify Seller in writing of any non-conformity or defect within 10 days after the Products are put into service or the Services are completed, but not more than thirty (30) days after delivery or completion. Buyer further agrees that confirmation that the Products or Services comply with the order, its commercial use of the Products or its failure to give prompt notice of non-conformity or defect shall constitute acceptance. Acceptance shall be final and Buyer waives the right to revoke acceptance for any reason, whether or not known by Buyer at the time of such acceptance. Acceptance shall automatically cause the provisions of Seller's warranty to apply and govern the rights, obligations and liabilities of the parties with respect to such nonconformity or defect, provided under no circumstances shall rejection give rise to any liability of Seller for incidental or consequential damages or losses of any kind.

7. Warranty for Products and Services.

(a)For Equipment:

Seller warrants its new Equipment manufactured and sold worldwide to be free, under normal use and service, from defects in material or workmanship for the time period designated in the warranty applicable to the particular type, make and model of Equipment or, in the event no specific warranty exists for such Equipment, for a period of twelve (12) months from the date of delivery.

(b)For Parts:

- (i) Seller warrants that Parts supplied by Seller will be free, under normal use and service, from defects in material or workmanship for a period of twelve (12) months from the date of delivery, where Seller is the OEM of such Parts;
- (ii) Seller warrants that that Parts supplied in connection with a warranty repair on Equipment sold by Seller will be free, under normal use and service, from defects in material or workmanship for a period of time equal to the OEM warranty provided by the manufacturer of such Parts, but if there is no OEM warranty on such Parts, then such warranty period shall terminate upon the expiration of the warranty for the Equipment originally sold by Seller; and
- (iii) Seller warrants that Parts supplied in connection with Services performed by Seller on equipment not originally sold by Seller will be free, under normal use and service, from defects in material or workmanship for a period of time equal to the OEM warranty provided by the manufacturer of such Parts.

(c)For Services:

- (i) Seller warrants that its field and shop labor services will be free from defects in workmanship for a period of ninety (90) days from the date of completion of such services;
- (ii) Seller warrants that its labor supplied in connection with its reconditioning services on mobile equipment will be free from defects in workmanship for a period of six (6) months from the date of completion of such services; and
- (iii) Seller provides no warranty, express or implied, on its inspection services.

The foregoing warranties shall only be valid if Buyer sends Seller written notice of the defect within thirty (30) days of its discovery and establishes that: (i) the Equipment or Parts, or any equipment subject to any Service, has been maintained and operated within the limits of rated and normal usage; and (ii) the defect did not result in any manner from the intentional or negligent action or inaction by Buyer, its agents or employees. If requested by Seller, Buyer must return the defective Equipment or Parts to Seller's facility for inspection, and if Buyer cannot establish that conditions (i) and (ii) above have been met, then the foregoing warranties shall not cover the alleged defect. Failure to give written notice of defect within such period shall be a waiver of the foregoing warranties and any assistance rendered thereafter shall not extend or revive it. Equipment, accessories, assemblies, components and Parts which are not manufactured by Seller are subject to the warranty of their respective manufacturers. The foregoing warranties shall be void in the event Buyer has carried out modifications or reconditioning work on the Equipment or Parts without the prior written consent of Seller. The foregoing warranties shall not cover any item on which serial numbers have been altered, defaced or removed. Maintenance and wear parts are not covered by the foregoing warranties and are the sole maintenance responsibility of Buyer. The foregoing warranties are limited to the first retail purchaser and are not assignable or otherwise transferable without the written agreement of Seller. **THE FOREGOING WARRANTIES ARE EXPRESSLY IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE LIMITED WARRANTIES CONTAINED HEREIN.** Seller neither assumes nor authorizes any other person to assume for Seller any other liability in connection with the sale of Seller's Equipment, Parts or Services. The foregoing warranties shall not apply to any Equipment or Parts or any part thereof purchased from Seller, or any equipment which was the subject of any Service performed by Seller, which has been subject to misuse, alteration, abuse, negligence, accident, acts of God or sabotage. No action by either party shall operate to extend or revive the foregoing limited warranties without the prior written consent of Seller.

8. Remedies for Breach. IN THE EVENT OF ANY BREACH OF WARRANTY BY SELLER, THE PARTIES AGREE THAT SELLER'S LIABILITY SHALL BE LIMITED EXCLUSIVELY TO THE REMEDIES OF REPAIR OR REPLACEMENT (AT SELLER'S SOLE DISCRETION) OF ANY DEFECTIVE PRODUCT OR THE RE-PERFORMANCE OF ANY DEFECTIVE SERVICES COVERED BY THE WARRANTY. In no event shall any repair or replacement of any defective Equipment or Parts, or the re-performance of any defective Services covered by the Seller's warranties in Section 7 extend the length of such warranties beyond the applicable periods specified in Section 7 above.

9. Limitation of Liability. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, SELLER AND ITS AFFILIATES SHALL NOT BE LIABLE FOR, AND SPECIFICALLY DISCLAIM, ANY LIABILITY FOR ANY: (A) LOST PROFITS AND/OR BUSINESS INTERRUPTION (WHETHER DIRECT OR INDIRECT); AND (B) INCIDENTAL, INDIRECT, CONSEQUENTIAL (WHETHER DIRECT OR INDIRECT) OR OTHER DAMAGES OR LOSSES OF ANY KIND, including without limitation, labor costs, loss of use, equipment rental, third party repairs, investigation costs, personal injury, emotional or mental distress, penalties, loss of service of personnel, or failure of Products to comply with any applicable laws; whether or not arising from breach of contract, warranty, negligence, product liability or otherwise. Notwithstanding anything contained herein to the contrary, in no event shall Seller's liability exceed the total order value.

10. Limitation of Actions. Any action for breach of this agreement must be commenced within one (1) year after the cause of action has accrued.

11. Specification Changes. In the event Seller incurs additional expense because of changes in specifications or drawings previously approved by Buyer, or in the event Seller is required to modify the ordered Products, perform any additional Services, perform any additional work or supply any additional Products, the additional expense shall be added to the purchase price. Seller shall have the right, in its sole discretion, to accept or reject any changes in specifications requested by Buyer. In no event shall any changes in specifications be made or accepted thirty (30) days prior to launch date or thereafter.

12. Security Interest. Buyer grants Seller a security interest in the Products purchased and the proceeds thereof. The security interest shall continue until payment in full of the purchase price and payment and performance by Buyer of all of its other obligations hereunder. Seller is entitled to all remedies of a secured party after default under the Ohio Uniform Commercial Code or other applicable law, including but not limited to the applicable Personal Property Security Act in Canada, in addition to all other rights provided by contract and by operation of law. Buyer agrees to pay to Seller, in addition to the interest on overdue sums due, reasonable attorney fees, court costs and other expenses of Seller incurred in enforcing Seller's rights. The Products purchased shall remain personal property and shall not become or be deemed a fixture or a part of any real estate on which it may be located. Buyer agrees to execute any instrument or document considered necessary by Seller to perfect its security interest in the Products including, but not limited to, financing statements, chattel mortgages, deeds of trust, deeds to secure debt, mortgages or other security instruments.

13. Insurance. Until the purchase price of any Product is paid in full or the Service is completed, the Buyer shall provide and maintain insurance equal to the total value of any such Product delivered hereunder against customary casualties and risks; including, but not limited to fire and explosion, and shall also insure against liability for accidents and injuries to the public or to employees, by adding Seller as additional insured with waiver of subrogation, and in an amount satisfactory to Seller. If the Buyer fails to provide such insurance, it then becomes the Buyer's responsibility to notify the Seller so that the Seller may provide same; and the cost thereof shall be added to the contract price. All loss resulting from the failure to affect such insurance shall be assumed by the Buyer.

14. Return of Products. Products may be returned only with Seller's prior written consent and upon the following conditions: (i) such Products must be new, unused and undamaged (and not obsolete), in good working order and in first class marketable condition; (ii) such Products must have been originally purchased by Buyer from Seller within the previous twelve (12) month period; and (iii) such Products shall be returned in the same condition as that in which they were sold by Seller to Buyer, and in the original packaging. Notwithstanding the foregoing, wire rope, cut chain, electrical components, special orders of Products or any Products which are altered or manufactured pursuant to Buyer's requirements and specifications are not returnable. The price for the repurchase of such Products shall be the invoice price previously received by Seller from Buyer for the Products in question, net of freight and taxes, and less a restocking fee to be determined by Seller at the time of the return.

15. Patents, Copyrights, Trademarks, Confidentiality. No license or other rights under any patents, copyrights or trademarks owned or controlled by Seller or under which Seller is licensed are granted to Buyer or implied by the sale of Products or the provision of Services. Buyer shall not identify as genuine products of Seller Products purchased hereunder which Buyer has treated, modified or altered in any way, nor shall Buyer use Seller's trademarks to identify such products; provided, however, that Buyer may identify such products as utilizing, containing or having been manufactured from genuine products of Seller as treated, modified or altered by Buyer or Buyer's representative, upon written prior approval of Seller. All plans, photographs, designs, drawings, blueprints, manuals, specifications and other documents relating to the business of Seller ("Information") shall be and remain the exclusive property of Seller and shall be treated by Buyer as confidential information and not disclosed, given, loaned, exhibited, sold or transferred to any third party without Seller's prior written approval; provided, however, that these restrictions shall not apply to Information that Buyer can demonstrate: (a) at the time of disclosure, is generally known to the public other than as a result of a breach of this agreement by Buyer; or (b) is already in Buyer's possession at the time of disclosure by from a third party having a right to impart such Information.

16. Default and Seller's Remedies. In the event of default by Buyer, all unpaid sums and installments owed to Seller, shall, at the Seller's sole option, become immediately due and payable without notice of any kind to Buyer. In addition to its right of acceleration, Seller may pursue any and all remedies allowed by law or in equity, including but not limited to any and all remedies available to it under the Ohio Uniform Commercial Code. In addition to the foregoing, and not in limitation thereof, Seller shall have the right to set off any credits or amounts owed to Buyer against any amounts owed by Buyer to Seller.

17. Indemnification by Buyer. Buyer hereby agrees to indemnify, release, defend and hold harmless Seller, its directors, officers, employees, agents, representatives, successors, and assigns against any and all suits, actions or proceedings at law or in equity (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) and from any and all claims demands, losses, judgments, damages, costs, expenses or liabilities, to any person whatsoever (including Buyer's and Seller's employees or any third party), or damage to any property (including Buyer's property) arising out of or in any way connected with any act, omission, negligence or willful misconduct of Buyer, its directors, officers, employees, agents, representatives, successors or assigns with respect to its purchase, use, operation, maintenance or installation of any Services or any Parts or Equipment furnished hereunder, or any breach by Buyer of these Terms and Conditions of Sale. If Buyer fails to fulfill any of its obligations under this paragraph or this agreement, Buyer agrees to pay Seller all costs, expenses and attorney's fees incurred by Seller to establish or enforce Seller's rights under this paragraph or this agreement. The provisions of this paragraph are in addition to any other rights or obligations set forth in this agreement.

18. Installation. Unless otherwise expressly agreed in writing, Buyer shall be solely responsible for the installation and erection of the Products purchased. Although Seller may in some cases provide a serviceman, data and drawings to aid Buyer with installation or start-up, Seller assumes no responsibility for proper installation or support of any Product when installed and disclaims any express or implied warranties with respect to such installation and support. Notwithstanding whether data and drawings are provided or a serviceman aids in the installation, Buyer shall indemnify and hold Seller harmless and at Seller's request, defend Seller from all claims, demands or legal proceedings (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) which may be made or brought against Seller in connection with damage or personal injury arising out of said installation or start-up.

19. On-Site Services. In the event that Seller is providing Services at Buyer's worksite (or at a location designated by Buyer), Buyer shall provide Seller free and clear access and an adequate power supply in order to perform the Services. Buyer shall maintain safe working conditions at the worksite, including, without limitation, implementing appropriate procedures regarding hazardous materials and energization and de-energization of power systems. Buyer shall immediately remedy any unsafe working condition at the worksite. Seller shall be entitled to suspend or terminate the Services in the event it determines that the worksite is unsafe. Seller shall have no responsibility or liability for any pre-existing condition of the worksite including, without limitation, violations of safety rules, building codes, zoning ordinances or other laws or regulations ("Regulations"). In the event that any unsafe working condition or failure of the worksite to comply with a Regulation results in an increase in the Seller's cost of, or the time required for, performance of the Services, Seller may make an equitable adjustment in price and schedule. Buyer authorizes Seller to perform the disassembly and inspection of any equipment necessary to provide the Services, including provision of all necessary Parts and labor, and agrees that Seller is not responsible for any damage or loss due to causes beyond Seller's control. Unless expressly agreed in writing, Services do not include architectural/engineering services or structural changes to Buyer's premises.

20. Additional Terms of Equipment Services. In the event Seller performs Services on Equipment for Buyer, Buyer hereby authorizes Seller to inspect and disassemble the Equipment provided, and authorizes Seller to perform the Services indicated in the applicable estimate, quote or work order (including provision of all necessary parts and labor). Buyer agrees that Seller is not responsible for: (i) damage or loss to the Equipment, or loss of personal property, caused by fire, theft, or causes beyond Seller's control, or (ii) delays in completion of Services caused by unavailability of parts or other causes. Buyer authorizes Seller and its employees to operate the Equipment on streets, highways or elsewhere for the purpose of testing and/or inspection. Buyer will be subject to a storage fee of \$20 per day for any Equipment left on Seller's premises more than fifteen (15) days after completion of the Services. Buyer grants Seller a security interest and lien in the Equipment and any parts supplied until payment in full of any amounts owed by Buyer to Seller. Seller is entitled to all remedies of a secured party after default under the Uniform Commercial Code in addition to all other rights provided under law or equity. Buyer agrees to pay to Seller, in addition to interest at the rate of 18% annually on overdue sums (or the maximum rate permitted by law), reasonable attorney fees, court costs and other expenses incurred by Seller in enforcing Seller's rights. Buyer agrees to execute any instrument or document considered necessary by Seller to perfect its security interest in the Equipment. In the event Buyer fails to retrieve the Equipment within ninety (90) days after completion of the Services, Buyer grants Seller a power of attorney to sell, or otherwise dispose of, such Equipment and to convey title to a purchaser of such Equipment, and to apply any sale proceeds against any amount owed by Buyer to Seller. In the event of default by Buyer, all unpaid sums owed to Seller shall, at Seller's sole option, become immediately due and payable without notice of any kind to Buyer.

21. Force Majeure. The Seller shall not be liable to the Buyer or be deemed to be in breach of this agreement by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Products or Services if the delay or failure was due to any cause beyond the reasonable control of the Seller including (without limitation) strike, lockout, riot, civil commotion, fire, accident, explosion, tempest, act of God, war, epidemic, stoppage of transport, terrorist activity, supply shortage or changes in government, governmental agency, laws, regulations or administrative practices.

22. Anti-Corruption; Export Controls; No Boycotts. Buyer agrees that it shall, and that any party retained or paid by the Buyer ("Retained Party") shall, comply with all applicable laws including, but not limited to, laws prohibiting public corruption and commercial bribery. Buyer further agrees that it shall, and that any Retained Party shall, comply with all applicable export controls, economic sanctions, embargoes and regulations regarding the export, re-export, shipment, distribution and/or sale of Products, technology, information or warranty related services. Buyer further agrees that it shall not, and any Retained Party shall not, export or re-export Products, technology, information or warranty related services directly or with its knowledge indirectly into Iran, Cuba, Syria, North Korea, the Crimea Region of the Ukraine or Russia without Buyer first obtaining written approval from Seller. Failure to comply strictly with this section and all applicable laws, regulations and licensing/approval requirements shall be grounds for immediate termination of this agreement by Seller. Notwithstanding anything to the contrary contained in any agreement between the Buyer and Seller or in any other document or agreement relating to the Products sold hereunder, Seller will not comply with requests related to the boycott of any country or other jurisdiction, except to the extent such boycott is required by or otherwise not inconsistent with United States law.

23. Telematics. If a telematics system is included with the Equipment, the telematics system is administered by a third party ("Teleservice Provider") and collects a range of operational data about the Equipment including, but not limited to, usage, performance and reliability. Buyer consents to Seller's obtaining such data from the Teleservice Provider for warranty, product improvement, marketing and customer support purposes. In addition to the foregoing, Buyer consents to Seller's collection, management and reporting of data (personal and non-personal) about the Equipment including, but not limited to, fuel consumption, up/down times, operation, defects, parts replacement, movement and location. Buyer shall gain any prior explicit consent from its customers and/or any third party, as required by applicable laws, enabling Seller and/or third parties to provide teleservices and data to Buyer. Buyer shall comply with all applicable laws relating to the provision of teleservices, including without limitations any applicable data protection laws.

24. Construction and Severability. This agreement constitutes the entire agreement between the parties regarding the subject matter hereto and shall be construed and enforced in accordance with the laws of the State of Ohio. Seller shall not be bound by any agent's, employees or any other representation, promise or inducement not set forth herein. The invalidity or unenforceability of any provisions of this agreement shall not affect any other provision and this agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

25. Jurisdiction. The parties agree that the proper and exclusive forum and venue in all legal actions brought to enforce or construe any of the provisions of this sales order agreement shall be in the United States District Court, Northern District of Ohio or, if federal jurisdiction is lacking in such legal action, in the state courts in Cleveland, Ohio.

26. No Assignment. No rights arising under this agreement may be assigned by the Buyer unless expressly agreed to in writing by the Seller.

27. Miscellaneous. Buyer represents that: (i) it is solvent and has the financial ability to pay for the Products or Services; and (ii) it has all requisite right, power and authority to perform its obligations under this agreement.

Terex Utilities Customer Furnished Chassis Delivery Policy

Delivery of customer supplied chassis from a dealership of the customer's choice shall be held to the same delivery procedure utilized by Terex Utilities' preferred chassis dealers, not limited too but including the following.

Confirmation of delivery should be made a minimum of 24 hours prior to anticipated delivery.

Contact at Terex Utilities is Paul Guderian, 605-884-3886, paul.guderian@terex.com.

For planning purposes, times available for delivery of cab & chassis are:

7:00am – 4:00pm Monday thru Thursday

7:00am – 11:00am Friday

Occasional Corporate Holidays (10) and/or plant shutdown(s) will override these days and times.

Delivery location:

Terex
3140 – 15th Avenue SE
Watertown, SD 57201

Expected chassis condition upon delivery:

Washed – at least evaluated to ensure ability to inspect for paint chips, rock chips in glass, leaking seals, etc.

Fueled – minimum acceptable fuel level will be where no fuel lights are lit.

Free from codes/dash lights.

No flat tires.

Free from engine, transmission or transfer case leaks.

Chassis undecking is not available at Terex. If needed, this will need to be coordinated by delivery service with local agencies (contact info can be provided).



Agenda Item Form

Date of City Council Meeting	6/14/2022
Department	Electric
Submitted by	Travis Matlock
Phone	479-271-5941

Item Type: (Check Applicable Item Type)

☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☒ Resolution	☐ Bid Award
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Recommendation/Suggested Action (Enter recommendation in space below):

Resolution to enter into an agreement with GDS Associates, Inc. and a budget adjustment to review Bentonville's formulaic rate with SWEPCO for any discrepancies and ensure that Bentonville is being properly charged for a Not to Exceed price of \$80,000.00. This firm was selected following the City's standard RFQ (RFQ 22-39) process for the procurement of professional services.

Estimated Cost	80,000.00
Is this Item Budgeted?	☐ Yes ☒ No
If no, please explain how item will be funded (briefly explain in space below) :	
Paid from Reserves	





Budget Adjustment Request

Date of City Council Meeting	6/14/2022
Department	Electric
Submitted by	Travis Matlock, PE
Phone	479-271-5941

Purpose of Budget Adjustment <i>(Enter purpose in space below):</i> Budget adjustment to use \$80,000 from reserves to pay GDS Associates, Inc. to perform a review of Bentonville's formulaic rate established in the Power Supply Agreement with SWEPCO.
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General Ledger Account Information*				
Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
503010	43210	Professional Services		\$ 80,000.00
		Totals	\$ -	\$ 80,000.00
		Net Impact on Fund Balance	\$ (80,000.00)	

*Final Account Number will be determined by Accounting Department after approval and purchase



www.bentonvillear.com

PLEASE RECYCLE



MEMORANDUM

DATE: June 14, 2022

TO: City Council, Mayor Orman

FROM: Travis Matlock, Electric Utility Director

RE: GDS Associates Agreement

The Electric Dept. recommends entering into an agreement (and the subsequent budget adjustment to cover costs) with GDS Associates, Inc. to review Bentonville's formulaic rate established in the Power Supply Agreement for a Not To Exceed cost of \$80,000.00.

Per Section 5.10 (Annual Adjustment), Bentonville is allowed 120 days after the True Up data is provided to review and verify that Bentonville is being properly charged. That will be provided at the end of June and the "clock" will start. This review will check inputs, formulas, taxes, interest, etc. to make sure that something has not slipped through the cracks.

This will be the first time a review of this kind has been performed. With all the changes in the industry, tax cuts, tax adders, variable interest rates, and due to the charge Bentonville received due to the 2021 winter storm, this is the right time to evaluate the formula.

This was not a budgeted item and will be paid for out of reserves.



PROFESSIONAL SERVICES AGREEMENT

PROJECT NAME: Power Supply Financial Analysis (“PROJECT”)

THIS AGREEMENT (“AGREEMENT”) is made in Benton County, Arkansas, by and between the City of Bentonville, Arkansas, hereinafter referred to as “CITY”, and GDS Associates, Inc., hereinafter referred to as “PROFESSIONAL CONSULTANT” (collectively, the “PARTIES”).

The PARTIES have caused this AGREEMENT to be effective this 25th day of May, 2022 (“EFFECTIVE DATE”).

RECITALS:

- A. WHEREAS, the CITY has a need to perform capital improvement projects for the City of Bentonville, Arkansas; and
- B. WHEREAS, The CITY has selected the PROFESSIONAL CONSULTANT and negotiated this AGREEMENT using the procedures as set forth in Ark. Code Ann. § 19-11-800; and
- C. WHEREAS, the CITY wishes to contract for Professional Services; and
- D. WHEREAS, The PROFESSIONAL CONSULTANT has the skill, experience, ability, background, certifications and knowledge to provide these services; and
- E. WHEREAS, The PROFESSIONAL CONSULTANT wishes to perform such professional services under this AGREEMENT with the CITY.

NOW, THEREFORE, in consideration of the terms in this AGREEMENT, the CITY and PROFESSIONAL CONSULTANT agree to the following:

ARTICLE I - PROJECT DESCRIPTION

The PROJECT shall be as described in APPENDIX A. "Project Description", attached hereto and incorporated herein by reference.

ARTICLE II - SCOPE OF SERVICE

Upon issuance of a written Notice to Proceed by the CITY, PROFESSIONAL CONSULTANT agrees to provide the CITY the necessary professional services related to the PROJECT, as set forth in APPENDIX B, "Scope of Services" ("SCOPE"), attached hereto and incorporated herein by reference.

ARTICLE III - STANDARD OF CARE

PROFESSIONAL CONSULTANT shall at all times material hereto adhere to the generally accepted standard of care typically exhibited by similarly situated professionals performing similar scope(s) of service on projects of like size, scope, nature, cost, schedule, and complexity, at the same time and in the same general regional locale ("Standard of Care").

ARTICLE IV - ADDITIONAL SERVICES

- A. Any service outside of the work described herein or included by reference hereto must be pre-approved by the CITY and executed as an AMENDMENT to this AGREEMENT by the Parties prior to any such work being completed; any such AMENDMENT shall be in accordance with the CITY'S purchasing laws and guidelines and may require approval from the Bentonville City Council.
- B. PROFESSIONAL CONSULTANT shall make no claims for additional services or changes in the services until an AMENDMENT has been fully executed by the Parties.

ARTICLE V - SCHEDULE OF FEES, SERVICES AND PAYMENT

- A. The term of this AGREEMENT shall commence on the EFFECTIVE DATE and shall proceed in accordance with APPENDIX C, "Schedule of Fees and Services, Key Milestones, and Durations for Major Tasks", attached hereto and incorporated herein by reference.
- B. The cost of this AGREEMENT shall be in accordance with APPENDIX C.
- C. CITY agrees to pay PROFESSIONAL CONSULTANT for all services authorized by inclusion in this AGREEMENT which have been properly performed by PROFESSIONAL CONSULTANT in accordance with this AGREEMENT.
- D. All fees paid to PROFESSIONAL CONSULTANT shall be based on invoices submitted by PROFESSIONAL CONSULTANT for work performed under this AGREEMENT, less any previous payments. PROFESSIONAL CONSULTANT shall submit invoices for services related to this AGREEMENT on a monthly basis.
- E. CITY reserves the right to delay, without penalty, any partial payment when, in the opinion of the CITY, PROFESSIONAL CONSULTANT has not made satisfactory progress on the Project based on the SCOPE. If CITY objects to any portion of an invoice, the CITY shall notify PROFESSIONAL CONSULTANT and shall pay all other portions of the invoice which are not in dispute. In the event of dispute, CITY and PROFESSIONAL CONSULTANT shall immediately make every effort to settle the disputed portion of the invoice.

- F. In the event that the CITY becomes credibly informed that any representations of PROFESSIONAL CONSULTANT provided in its invoicing are wholly or partially inaccurate, CITY may withhold payment of sums then, or in the future, otherwise due to PROFESSIONAL CONSULTANT until the inaccuracy and the cause thereof is corrected to the CITY's reasonable satisfaction.
- G. If the CITY fails to make any payment, not in dispute, due to PROFESSIONAL CONSULTANT within thirty (30) days after receipt of an invoice, then the amount due to the PROFESSIONAL CONSULTANT will increase at the lesser of one percent (1 %) per month or the maximum amount allowed by law after the 30th day. In addition, PROFESSIONAL CONSULTANT may, after giving seven (7) days' written notice to CITY, suspend its services and any deliverables until PROFESSIONAL CONSULTANT has been paid in full for all amounts outstanding more than thirty (30) days.

ARTICLE VI - INSURANCE

- A. PROFESSIONAL CONSULTANT shall during the term hereof maintain in full force and effect the following insurance:
 - 1. A comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the PROFESSIONAL CONSULTANT's performance of services pursuant to this AGREEMENT with a combined single limit of not less than \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate for injury to persons (including death), and for property damage;
 - 2. A policy of automobile liability insurance covering any vehicles owned and/or operated by PROFESSIONAL CONSULTANT, its officers, agents, and employees, and used in the performance of this AGREEMENT with policy limits of not less than \$1,000,000.00 combined single limit and aggregate for bodily injury and property damage;
 - 3. Statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of PROFESSIONAL CONSULTANT's employees involved in the provision of services under this AGREEMENT with policy limit of not less than \$1,000,000.00; and
 - 4. Professional Liability/Errors and Omissions coverage covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$1,000,000.00.
- B. All insurance and certificate(s) of insurance shall contain the following provisions:
 - 1. Include CITY as additional insured as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability/Errors and Omissions coverage; and
 - 2. provide for at least thirty (30) days prior written notice to CITY for cancellation or non-renewal of the insurance;
 - 3. provide for a waiver of subrogation against CITY for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability/Errors and Omissions coverage.
- C. PROFESSIONAL CONSULTANT shall provide 30 day written notice to CITY of any material change of or to the insurance required herein.
- D. All insurance companies providing the required insurance shall be authorized to transact business in Arkansas and rated at least "A" by AM Best or other equivalent rating service. A certificate of insurance evidencing

the required insurance and all endorsements required by this Agreement shall be submitted prior to commencement of services.

- E. In the event that additional or greater insurance requirements are warranted, these requirements shall be included as an Appendix, which will be attached hereto and incorporated by reference.

ARTICLE VII - RIGHT OF ACCESS

- A. CITY will obtain and/or furnish right-of-access for PROFESSIONAL CONSULTANT to perform any required studies, surveys, tests or other necessary investigations in relation to the PROJECT.
- B. PROFESSIONAL CONSULTANT will take reasonable precautions to minimize damage to the personal or real property in the performance of such surveys, tests, studies and investigations.

ARTICLE VIII - RECORDS AND RETENTION

- A. All surveys, studies, proposals, applications, drawings, plans, specifications and other documents, including those in electronic form, prepared by PROFESSIONAL CONSULTANT and its PROFESSIONAL CONSULTANTS, subcontractors, agents, representatives, and/or employees in connection with this AGREEMENT ("PROJECT DOCUMENTS") are intended for the use and benefit of CITY. PROFESSIONAL CONSULTANT and its PROFESSIONAL CONSULTANTS, subcontractors, agents, representatives, and/or employees shall be deemed the authors of their respective part of the PROJECT DOCUMENTS. Notwithstanding anything to the contrary, CITY shall own, have, and retain all rights, title and interest in and to all PROJECT DOCUMENTS, whether in draft form or final form, which are produced at CITY's request or otherwise produced from PROFESSIONAL CONSULTANT's performance of the work described herein for CITY. The CITY's ownership of PROJECT DOCUMENTS shall not apply to PROFESSIONAL CONSULTANT's proprietary standard details that were developed by the PROFESSIONAL CONSULTANT prior to the commencement of this PROJECT.
- B. CITY shall have full authority to reuse, reproduce, publish, disclose and distribute PROJECT DOCUMENTS, as needed, according to Arkansas State Law.
- C. PROFESSIONAL CONSULTANT shall, upon completion of the services and full payment for the PROFESSIONAL CONSULTANT'S services by the CITY, or earlier termination and appropriate compensation as provided by this AGREEMENT, provide the CITY with all PROJECT DOCUMENTS prepared by PROFESSIONAL CONSULTANT pursuant to this AGREEMENT in formats requested by the CITY.
- D. Acceptance and approval of the PROJECT DOCUMENTS by the CITY shall not constitute nor be deemed a release of the responsibility and liability of PROFESSIONAL CONSULTANT, its employees, associates, agents and PROFESSIONAL CONSULTANTS for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the CITY for any defect in the designs, working drawings and specifications, or other documents prepared by PROFESSIONAL CONSULTANT, its employees, contractor, agents and PROFESSIONAL CONSULTANTS.
- E. PROFESSIONAL CONSULTANT will retain the PROJECT DOCUMENTS for a period of three years following project completion. During this three year period, any requests for document recovery and reproduction will be assessed a fee in accordance with PROFESSIONAL CONSULTANT's FEES.

ARTICLE IX - SAFETY

- A. CITY agrees to inform PROFESSIONAL CONSULTANT of any applicable site safety procedures and regulations known to CITY as well as any special safety concerns or dangerous conditions at the site of which the CITY is aware, which PROFESSIONAL CONSULTANT shall communicate to its employees. PROFESSIONAL CONSULTANT and its employees shall adhere to such procedures and regulations once notice has been given by the CITY.
- B. Unless specifically provided in the SCOPE, PROFESSIONAL CONSULTANT shall not have any responsibility for overall job safety at the site. If in the PROFESSIONAL CONSULTANT's opinion, its field personnel are unable to access required locations or perform required services in conformance with applicable safety standards, PROFESSIONAL CONSULTANT may immediately suspend performance until such safety standards can be attained.
- C. PROFESSIONAL CONSULTANT agrees to indemnify and hold harmless the CITY for any safety conditions that may arise out of PROFESSIONAL CONSULTANT's performance of this AGREEMENT.

ARTICLE X - TERMINATION

- A. CITY may suspend or terminate this AGREEMENT for cause or without cause at any time by giving written notice to PROFESSIONAL CONSULTANT. In the event suspension or termination is without cause, payment to PROFESSIONAL CONSULTANT, in accordance with the terms of this AGREEMENT, will be made on the basis of services reasonably determined by the CITY to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to CITY.
- B. Should the CITY require a modification of this AGREEMENT with the PROFESSIONAL CONSULTANT, and in the event the CITY and PROFESSIONAL CONSULTANT fail to agree upon a modification to this AGREEMENT, the CITY shall have the option of terminating this AGREEMENT and the PROFESSIONAL CONSULTANT's services hereunder at no additional cost other than the payment to PROFESSIONAL CONSULTANT, in accordance with the terms of this AGREEMENT, for the services reasonably determined by the CITY to be properly performed by PROFESSIONAL CONSULTANT prior to such termination date.
- C. If, for whatever adequate funding is not made available by CITY to support or justify continuation of the level of services to be provided by PROFESSIONAL CONSULTANT under this AGREEMENT, CITY may terminate or reduce the amount of services to be provided by PROFESSIONAL CONSULTANT under this AGREEMENT. In such event, CITY will notify PROFESSIONAL CONSULTANT in writing at least thirty (30) days in advance of such termination or reduction of services for lack of funds.
- D. In no event shall the CITY pay to PROFESSIONAL CONSULTANT fees for termination outside of payment for services reasonably determined by the City to be properly performed prior to termination.

ARTICLE XI - INDEMNIFICATION

- A. For purposes of this AGREEMENT, PROFESSIONAL CONSULTANT agrees to indemnify, hold harmless the CITY, its officers and employees from any loss, damage, liability or expense, of any nature whatsoever to the extent caused by the negligence, willful misconduct, or other actionable fault of PROFESSIONAL CONSULTANT, its affiliates, subsidiaries, employees, agents, assignees, and subcontractors and their respective employees and agents. PROFESSIONAL CONSULTANT is not required hereunder to defend the CITY, its officers, appointees, employees, or agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on the CITY's negligence

- B. Nothing contained herein shall waive any governmental immunity CITY may be entitled to by law.
- C. This provision shall survive the termination of this AGREEMENT.

ARTICLE XII - CONTINGENCY CLAUSE

- A. The CITY may add a contingency amount to the contract to cover additional services as described in APPENDIX B. Any use of such contingency funds for additional services shall be executed as an AMENDMENT to this AGREEMENT.
- B. The Contingency shall in no manner substitute for an official AMENDMENT.

ARTICLE XIII - RELATIONSHIP OF THE PARTIES

It is understood and agreed by and between the parties that the PROFESSIONAL CONSULTANT, in satisfying the conditions of this AGREEMENT, is acting independently, and that the CITY assumes no responsibility or liabilities to any third party in connection with PROFESSIONAL CONSULTANT's actions. All services to be performed by the PROFESSIONAL CONSULTANT pursuant to this AGREEMENT shall be in the capacity of an Independent Contractor, and not as an agent or employee of CITY. The PROFESSIONAL CONSULTANT shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this AGREEMENT. There is no intended third party beneficiary to the AGREEMENT and nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

ARTICLE XIV - DISPUTE RESOLUTION

- A. CITY and PROFESSIONAL CONSULTANT agree that disputes relative to the services will first be addressed by negotiations between the Parties. If direct negotiations fail to resolve the dispute, the Party initiating the claim that is the basis for dispute may take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, PROFESSIONAL CONSULTANT will proceed with the services as per this AGREEMENT as if no dispute existed, and CITY will continue to make payment for PROFESSIONAL CONSULTANT's completed services; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.

ARTICLE XV - OPINIONS OF PROBABLE COST

Since the PROFESSIONAL CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over methods of determining prices, or over competitive bidding or market conditions, the PROFESSIONAL CONSULTANT's estimates of PROJECT costs provided for herein are to be made on the basis of the PROFESSIONAL CONSULTANT's experience and qualifications and represent the PROFESSIONAL CONSULTANT's judgement in accordance with the "Standard of Care". The PROFESSIONAL CONSULTANT cannot and does not guarantee that proposals, bids or actual PROJECT costs will not vary from estimates prepared by the PROFESSIONAL CONSULTANT.

ARTICLE XVI - APPLICABLE LAWS

PROFESSIONAL CONSULTANT shall comply with all Federal, State, Local laws, ordinances, resolutions, specifications, regulations and all other laws or regulations relating or applicable to service to be performed under this AGREEMENT. Interpretation of this AGREEMENT and disputes arising out of or related to this AGREEMENT will be subject to and governed by the laws of the State of Arkansas. Jurisdiction and venue for any suit arising out of or related to this AGREEMENT will be in the District Court of Benton County, Arkansas,

ARTICLE XVII - PRECEDENCE

This AGREEMENT shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or any other like document regarding the PROJECT or PROFESSIONAL CONSULTANT's services.

ARTICLE XVIII - SEVERABILITY

- A. In the event that one or more provisions contained herein shall, for any reason, be deemed invalid, illegal, void or unenforceable, in whole or in part, the remaining provisions hereof shall remain in full force and effect.
- B. In the event that any provision hereof is in conflict with any statutory provision of the State of Arkansas, said provision, which may be in conflict therewith, shall be deemed inoperative, null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions; provided, however, that the remaining provisions of this AGREEMENT will be unaffected and will continue to be valid and enforceable.

ARTICLE XIX - SURVIVAL OF OBLIGATIONS

The obligations of the Parties contained in this AGREEMENT, which by their nature survive after the term of the AGREEMENT, shall survive the termination or expiration of this AGREEMENT and continue indefinitely or as otherwise provided by this AGREEMENT.

ARTICLE XIX – ENTIRE AGREEMENT

This AGREEMENT, including all documents and Appendices included by reference herein, constitutes the entire agreement between the PARTIES and supersedes all prior agreements, whether oral or written, covering the same subject matter. This AGREEMENT may not be modified or amended except in writing, mutually agreed upon and accepted by both PARTIES to this AGREEMENT.

The cost of this AGREEMENT including all reimbursable expenses as described in the FEES AND SCHEDULE, **shall not exceed** Eighty Thousand Dollars USD (\$80,000.00), unless otherwise approved by the CITY through an official AMENDMENT agreed and executed by CITY and PROFESSIONAL CONSULTANT.

IN WITNESS THEREOF, the CITY and PROFESSIONAL CONSULTANT have executed this AGREEMENT, the EFFECTIVE DATE of which is indicated on page 1 of this AGREEMENT.

CITY OF BENTONVILLE	GDS ASSOCIATES, INC.
CITY	PROFESSIONAL CONSULTANT
	
BY	BY
MAYOR	PRINCIPAL
TITLE	TITLE
	5/25/2022
DATE SIGNED	DATE SIGNED



Agenda Item Form

Date of City Council Meeting	6/14/2022
Department	Electric
Submitted by	Travis Matlock, PE
Phone	479-271-5941

Item Type: (Check Applicable Item Type)					
☐ Budget Adjustment	☐ Change Order	☐ Informational	☒ Ordinance	☐ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Amend Ordinance 2022-82 and waiver of bid to purchase (2) 3500 cab & chassis, and purchase (1) 3500 and (1) 5500 cab & chassis from Superior Auto Group for \$116,408.					

Estimated Cost	\$116,408 plus tax
Is this Item Budgeted?	☒ Yes ☐ No
If no, please explain how item will be funded (briefly explain in space below) :	



MEMORANDUM

DATE: June 14, 2022

TO: City Council, Mayor Orman

FROM: Travis Matlock, Electric Utility Director

**RE: Amended Bid Waiver – (1) 3500 and (1) 5500
cab & chassis**

The Electric Dept. recommends amending Ordinance 2022-82 for the purchase (2) 3500 cab & chassis from Superior Auto Group for \$103,496.00, and purchase (1) 3500 and (1) 5500 cab & chassis for \$116,408. This price is still within the 2022 budget.

At the April 5th Utility Board (and April 12th City Council), BEUD recommended purchase of the (2) 3500 regular C&C. This was in error because one of the trucks should have been a crew cab to replace an existing crew truck. Superior Auto group has a 5500 on the lot and will hold the bid price from IFB-22-34 of \$64,660.00. Below is the justification of the bid waiver from the April 5th UB.

The City solicited bids for multiple Ram 3500, or equivalent trucks for both the Parks and Electric Departments, through IFB-22-34. The only bid received was an alternate bid from Superior Auto Group, as they were not able to supply any of the trucks according to specification. Superior offered the City multiple options in their alternate bid for Park's and Electric's consideration. The Parks Department was not able to utilize any of the trucks due to variations in the specifications. The Electric Department was able to utilize two of the Ram 3500 trucks offered, as the variations were not material for use of the trucks. Due to the alternate specifications and submission structure, staff is recommending a Waiver of Bid to Superior Auto Group to allow the Electric Department to purchase the two trucks needed for crews. The estimated delivery date for these trucks is 60 days. Due to the current supply chain issues with vehicles, and the fact that Superior is able to supply these vehicles much sooner than other ordering methods (such as through state contract where most items have been cancelled, have an 5-8 month lead times, or are not able to honor state contract prices) it is not practical to solicit bids again.

E.



**2022 MODEL YEAR
RAM 5500 CHASSIS
TRADESMAN CREW CAB 60"C/A 4X4**

THIS VEHICLE IS MANUFACTURED TO MEET SPECIFIC UNITED STATES REQUIREMENTS. THIS VEHICLE IS NOT MANUFACTURED FOR SALE OR REGISTRATION OUTSIDE OF THE UNITED STATES.

MANUFACTURER'S SUGGESTED RETAIL PRICE OF THIS MODEL INCLUDING DEALER PREPARATION

Base Price: \$51,505

RAM 5500 CREW CAB CHASSIS

Exterior Color: Bright White Clear-Coat Exterior Paint

Interior Color: Black / Diesel Gray Interior Color

Interior: Heavy-Duty Vinyl 40 / 20 / 40 Split Bench Seat

Engine: 6.7L I6 Cummins Turbo Diesel Engine

Transmission: 6-Speed Automatic Aisin AS69RC HD Transmission

STANDARD EQUIPMENT (UNLESS REPLACED BY OPTIONAL EQUIPMENT)

FUNCTIONAL/SAFETY FEATURES

Advanced Multistage Front Air Bags
Job Rated
Anti-Spin Differential Rear Axle
Manual Shift-On-The-Fly Transfer Case
Electronic Stability Control
Stationary Elevated Engine Idle
Upfitter Electronic Module (VSM)
Anti-Lock 4-Wheel Disc Brakes
730-Amp Maintenance-Free Battery
180-Amp Alternator
Rear Heavy-Duty Stabilizer Bar
Push-Button Start
Sentry Key® Theft Deterrent System
Speed Control
Active Grille Shutters
Automatic Headlamps
Low-Beam Daytime Running Headlamps
Power Accessory Delay
Dash Pass-Thru Wire Circuits
52-Gallon Rear Fuel Tank

INTERIOR FEATURES

Uconnect® 3 with 5-Inch Touch Screen Display
Integrated Voice Command with Bluetooth®
Full Function Media Hub with 2-USB Plus Aux Port
Instrument Panel Mounted Auxiliary Switches
12-Volt Auxiliary Power Outlet
Air Conditioning
Power Front Windows with 1-Touch Up / Down
40 / 20 / 40 Split Bench Seat
Tilt Steering Column
Passenger-Side Sun Visor with Mirror
Rear-View Day / Night Mirror
Driver / Passenger Assist Handles
Black Vinyl Floor Covering
Global Telematics Box Module (TBM)
SiriusXM Guardian™ Connected Service w/Trial Period
Front Height-Adjustable Shoulder Belts

EXTERIOR FEATURES

19.5-Inch x 6.0-Inch Steel Wheels

7-Pin Trailer Wiring Harness
Folding Trailer-Tow Mirrors
Clearance Lamps
Tow Hooks
Tinted Windshield Glass
Tinted Glass Windows

OPTIONAL EQUIPMENT (May Replace Standard Equipment)

Customer Preferred Package 2YA

Power Black Trailer-Tow Mirrors \$260
Heavy-Duty Front Suspension Group \$1,000
6-Speed Automatic Aisin AS69RC HD Transmission \$8,995
6.7L I6 Cummins Turbo Diesel Engine \$495
Remote Keyless-Entry \$145
Transfer Case Skid-Plate Shield \$465
Trailer Brake Controller
Trailer Light Check

Destination Charge \$1,795

TOTAL PRICE: * \$64,660

WARRANTY COVERAGE

5-year or 100,000-mile Powertrain Limited Warranty
3-year or 36,000-mile Basic Limited Warranty.
Ask Dealer for a copy of the limited warranties or see your owner's manual for details.

**5 YEAR / 100,000 MILE
POWERTRAIN WARRANTY**

For more information visit: www.ramtrucks.com
or call 1-866-RAMINFO

FCA US LLC

**EPA
DOT**

Fuel Economy and Environment



Fuel Economy

N/A
combined city/hwy city highway
N/A gallons per 100 miles

**Heavy duty vehicle,
no label required.**



You spend

N/A
in fuel costs
over 5 years
compared to the
average new vehicle.

Annual fuel cost
N/A

Fuel Economy & Greenhouse Gas Rating (tailpipe only)



Smog Rating (tailpipe only)



fuelconomy.gov

Calculate personalized estimates and compare vehicles



GOVERNMENT 5-STAR SAFETY RATINGS

This vehicle has not been rated by the government for overall vehicle score, frontal crash, side crash, or rollover risk.

Source: National Highway Traffic Safety Administration (NHTSA)
www.safercar.gov or 1-888-327-4236



**VEHICLE
PROTECTION**
A PRODUCT OF FCA US LLC

Ask for Mopar Vehicle Protection for your vehicle. We Built It. We Back It.

\$64,660.00
Available Units = 3 Vehicles

JAL

3/8/2022

Assembly Point/Port of Entry: SALTILLO, MEXICO S.L. SHIP TO: SOLD TO:
VIN: 3C7-WRNL7NG-198839 L4-VON: 7681 0209-3



THIS LABEL IS ADDED TO THIS VEHICLE TO COMPLY WITH FEDERAL LAW. THE LABEL CANNOT BE REMOVED OR ALTERED PRIOR TO DELIVERY TO THE ULTIMATE PURCHASER.

* STATE AND/OR LOCAL TAXES IF ANY, LICENSE AND TITLE FEES, AND DEALER SUPPLIED AND INSTALLED OPTIONS AND ACCESSORIES ARE NOT INCLUDED IN THIS PRICE. DISCOUNT, IF ANY, IS BASED ON PRICE OF OPTIONS IF PURCHASED SEPARATELY.



Agenda Item Form

Date of City Council Meeting	6/14/2022
Department	Electric
Submitted by	Travis Matlock
Phone	479-271-5941

Item Type: (Check Applicable Item Type)					
☐ Budget Adjustment	☐ Change Order	☒ Informational	☐ Ordinance	☐ Resolution	☐ Bid Award
Recommendation/Suggested Action (Enter recommendation in space below):					
Recommend two existingt BEUD Position be re-classified to a Field Supervisor and a Crew Leader. These postions will be filled by existing personnel.					

Estimated Cost	
Is this Item Budgeted?	☐ Yes ☐ No
If no, please explain how item will be funded (briefly explain in space below) :	



MEMORANDUM

DATE: June 14, 2022

TO: Human Resources, Mayor Orman

FROM: Travis Matlock, Electric Utility Director

RE: Position Reclassifications

Mayor, as BEUD is continuing to grow, we are continually looking at our organization to make sure we have the right people in the right places. At this time I would like to propose two changes that have become more pronounced as we go. This is not a "head count" change, but a "position reclassification" and changing of existing job duties.

First, as the substation department has grown (extra person added this year), the Engineering Manager has put more and more responsibility on the longest tenured Substation Technician, Jeremy Hooper. Jeremy has taken that responsibility and shown that he is more than capable. He is performing all the duty of a Field Supervisor, such as scheduling work, working with management, ordering parts, making emergency decisions, and reviewing subordinates work. Because he has shown this ability, it has freed up the Engineering Manager's work load. He is confident that all nine of our substations and our switching station are under watchful eyes. Jeremy has also help to oversee and monitor the WMT Campus construction and has caught multiple items that would have proven troublesome to BEUD in the future. I would like to propose that Jeremy be re-classified from Substation Technician to Field Supervisor. This would give BEUD four (4) Field Supervisors and a good breakdown between responsibilities: Overhead, Underground, Service, and Substation.

Second, the Service Dept. (mentioned above) has continued to grow also. With BEUD bringing in-house the utility locating, with the AMI metering getting ready to start back up, meter inspection/installation, and the amount of homes/business being constructed, there is now a need for a Crew Leader to allow the Field Supervisor to be able to focus on more long term items while the Crew Leader can focus on day-to-day tasks. Damon Gormly is a 1st Class Lineman and has de-facto been a Crew Leader in the last few months. Performing crew leader duties without the title or recognition. Also, adding this Crew Leader lines the Service Dept. up with BEUD's other line crews, the

Overhead and Underground. I would like to propose that Damon Gormly be re-classified from 1st Class Lineman to Crew Leader.

Thank you for your consideration.