



**SHELBY COUNTY GOVERNMENT**  
 160 N. Main Street, Suite 900, Purchasing  
 MEMPHIS, TENNESSEE 38103  
 (901) 222-2250

OFFICE COPY

Purchase Order No.
P030837

Issue Date
05/03/18

**Purchase Order**

Vendor No.	Delivery Required	Terms	Ship Via	F.O.B	Requisition No.
A2829	05/17/18	N30		DEST	R066128

Issued To **TIOGA ENVIRONMENTAL CONSULTANTS, IN**  
 357 NORTH MAIN STREET  
 MEMPHIS, TN 38103

Ship To **SHELBY COUNTY DIVISION OF PLANNING**  
 DEVELOPMENT  
 125 N. MAIN, RM 468  
 MEMPHIS, TN 38103

EOC #: MBLOSB-S-0120-27353  
 Buyer: SONJA WORTHY

IF MATERIAL SAFETY DATA SHEETS ARE  
 REQUIRED ON PRODUCT(S) THAT YOU WILL BE  
 PROVIDING, PLEASE SUBMIT SAME WITH  
 PRODUCT(S) DELIVERED.

Item	Quantity	U/M	Description	Unit Price	Extended Price
1			ADDITIONAL WORK REQUIRED FOR HABITAT ASSESSMENT SURVEY COMMODITY: 926/83 ACCOUNT DISTRIBUTION: 297-271272-6678  MSTROM@TIOGAENV.COM	3000.00000	3000.00
<b>Total of Purchase Order</b>					<b>3000.00</b>

I hereby certify that the goods/services on attached invoice(s)  
 have been received and that payment is in order.  
 This is a  Partial payment  Final payment on this P.O.  
 Payment amount approved: \$ \_\_\_\_\_  
 Signature \_\_\_\_\_ Date \_\_\_\_\_

ORDER SUBJECT TO TERMS AND CONDITIONS ON REVERSE SIDE  
 BILLING INSTRUCTIONS: SHOW PURCHASE ORDER NUMBER  
 ON ALL INVOICES. NOTE: PAYMENTS MAY BE DELAYED UNLESS  
 BILLING INSTRUCTIONS ARE FOLLOWED EXACTLY

SEND ORIGINAL INVOICE TO:  
 SHELBY COUNTY DIVISION OF PLANNING  
 DEVELOPMENT  
 25 N. MAIN, RM 468  
 MEMPHIS, TN 38103  
 901-576-7197

JANICE A. HOLMES  
 APPROVED: ADMINISTRATOR OF PURCHASING

05/03/18  
 Date

*Janice A. Holmes*  
 Authorized Signature



## TERMS AND CONDITIONS

1. **VENDOR:** Shall in all cases be the Seller.
2. **BUYER:** Shall in all cases be the Shelby County Government/Purchasing Department
3. **ACCEPTANCE:** This order with any attachments, constitutes the entire agreement of the Vendor and Buyer. No waiver or modification or additions to the terms of this order shall be valid unless in writing and signed by the Vendor and Buyer.
4. **PRICES:** The Buyer shall not be billed at prices higher than those stated on the front of this order. Unless otherwise specified, the price stated includes all charges for packing, hauling, storage and transportation to point of delivery. No taxes shall be included in this price except those which Vendor is required by law to collect from Buyer. If there are any of these taxes, then they shall be listed separate on the Vendor's invoice. Finance charges, interest and/or penalties for late payment will not be paid on this purchase order.
5. **PACKAGING:** Seller with package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (a) Seller's name, address; (b) Consignee's names, address and purchase order or purchase release number and the supply agreement number if applicable; (c) container number and total number of containers, e.g. box 1 of 4 boxes and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided.
6. **TITLE & RISK:** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.
7. **TRANSPORTATION CHARGES:** F.O.B destination unless delivery terms are specified otherwise in bid; Buyer agrees to reimburse Seller for transportation costs in the amount specified in the Seller's bid, or actual cost, whichever is lower, if the quoted delivery terms do not include transportation costs, provided, Buyer shall have the right to designate what method of transportation shall be used to ship the goods.
8. **DELIVERY:** Substitutions will not be accepted. Partial shipments shall be allowed, however, the shipment shall be completed by the date shown on this order or order shall be subject to cancellation by Buyer. Vendor shall not ship excess quantities without Buyer's prior approval.
9. **INVOICING:** Vendor shall invoice all shipments in duplicate. The invoice shall describe the items, reflect any applicable terms of payment, and must show the Purchase Order Number. Unless this Purchase Order Number is shown on the invoice, it may be returned to the Vendor. The invoice shall be an original or a certified copy by the Vendor.
10. **GRATUITIES:** Shelby County Government may, by written notice to the Seller, cancel any contract and /or purchase order without liability to Seller if it is determined by the County that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Seller, or any agent or representative of the Seller, to any officials or employee of the County with a view toward securing a contract for securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such a contract. In the event the contract and/or purchase order is canceled by the County pursuant to this provision, the County shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Seller in providing such gratuities.
11. **WARRANTIES:** Seller warrants that the items and services covered hereunder will conform to applicable specifications, instructions, drawings, data and samples, will be merchantable, of good material and workmanship, free from defects and will be fit and sufficient for the purpose intended. These warranties shall be in addition to all other warranties, expressed, implied or statutory. Payment for, inspection of, or receipt of articles or services shall not constitute a waiver of any breach of warranty.
12. **AUTHORIZATION FOR CHANGES:** Only the Administrator of Purchasing or his designated person has the authority to change any description, price or delivery date on this Purchase Order. If the terms listed hereon were purchased by the Buyer on a formal bid form, then NO change in above will be made.
13. **DEFAULT-CANCELLATION:** Buyer reserves the right by written notice of default, to cancel the order, without liability to Buyer, in the event of the happening of any of the following: insolvency of Seller, the filing of voluntary petition in bankruptcy of Seller, the filing of an involuntary petition to have Seller declared bankrupt, the appointment of a Receiver or Trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors. If Seller fails to perform as specified herein, or if Seller breaches any of the terms hereof, Buyer reserves the right, without any liability to Buyer, upon giving Seller written notice, to (1) cancel this order in whole or in part, by written notice to Seller and Seller shall be liable to Buyer for all damages, losses and liability incurred by Buyer directly or indirectly resulting from Seller's breach, or (2) obtain the goods ordered herein from another source with any excess cost resulting therefrom, chargeable to Seller, if such deficiencies are not remedied. The remedies herein provided shall be cumulative and in addition to any other remedies provided at law or in equity.
14. **INDEMNIFICATION:** Seller agrees to indemnify and hold harmless Buyer, its successors and assigns, customers and users of its products against all suits at law or in equity and from all damages, claims and demands arising out of death or injury, to any person or damages to any property alleged to have resulted from the goods hereby ordered, and, upon the tendering of any suit or claim to Seller, to defend the same at Seller's expense as to all costs, fees and damages. The foregoing indemnification shall apply whether Seller or Buyer defends such suit or claims and whether the death, injury or property damage is caused by the sole or concurrent negligence of Seller or otherwise.
15. **PATENT IDEMNIFICATION:** Seller shall indemnify and save harmless Buyer, its successors, assigns, customers or users of its products, from and against all loss, liability and damage, including costs and expenses, resulting from any claim that the manufacture, use, sale or resale of any goods supplied under this order infringe any patent or patent rights, and Seller shall when notified, defend any action or claim of such infringement at its own expense.
16. **ASSIGNMENT:** Neither the contract or this purchase order, nor this order nor any rights or obligations herein may be assigned by Seller, nor may Seller delegate the performance of any of its duties hereunder without, in either case, County's prior written consent. Any assignment or attempted assignment, or any nature to third parties, without consent of the County, shall be cause for termination of the contract and/or purchase order at the option of the County.
17. **EQUAL EMPLOYMENT:** To comply fully with the equal requirements of Title VII of Civil Rights Act of 1964, and with Title VI of the Civil Rights Act of 1964.
18. **CONFLICT OF INTEREST:** No part of the total contract and/or purchase order amount shall be paid directly or indirectly to any official or employee of the County of Shelby Tennessee as wages, compensation, or gifts in exchange for acting as official, agent, employee, subcontractor, or consultant to the contractor in connection with any work contemplated or performed relative to this contract.
19. **HANDICAP, RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN:** No person on the grounds of handicap, race, color, religion, sex or national origin, will be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this contract, or in the employment practices of the contractor (vendor).
20. **APPLICABLE LAW AND VENUE.** The validity, interpretation and performance of these terms and conditions shall be governed by the laws of the State of Tennessee. By acceptance of this order, the vendor agrees that the venue for any cause of action arising pursuant to same shall be the courts of the State of Tennessee and any attempt by vendor to limit the effect of this provision shall be null and void.
21. **UNIFORM COMMERCIAL CODE:** If any provisions of this agreement are in conflict with the provisions of Title 47, Chapters 1 through 9, TCA, it is the intent of this agreement to modify or vary the provisions of Title 47 of the TCA.
22. **LIABILITY:** Any attempt by Vendor to limit its liability for goods or services provided under this purchase order shall be void and of no effect.





March 7, 2018

Shelby County, TN  
Attn: Mr. Tom Needham, Director of Public Works  
160 N. Main St.  
Memphis, TN 38103

RE: Bat Emergence Survey  
Wolf River Greenway Resiliency Project  
Rodney Baber Park and Kennedy Park  
Shelby County, TN

Dear Mr. Needham:

This letter, including the attached General Provisions, is provided in response to your need for professional consulting services including a bat emergence survey for the Indiana Bat and Northern Long-eared Bat [the "Services"] with respect to potential bat roost trees that require removal at the Rodney Baber Park and Kennedy Park [the "Property"] relative to the Wolf River Greenway Resiliency Project in northern Memphis, Shelby County, TN [the "Project"] for Shelby County, TN [the "Client"] by Tioga Environmental Consultants, Inc. ["Tioga"]. Tioga proposes to perform the Services upon the terms and conditions set forth in this letter.

1. **PURPOSE.** The services are requested in connection with the environmental review requirements for the Project, currently funded in part through a National Disaster Resiliency Grant. The US Fish and Wildlife Service (USFWS) has required that the presence / absence of the listed bat species be verified at three potential roost trees that require removal as part of the Wolf River Greenway Resiliency Project's park upgrades. If no bats are found to be utilizing the trees as roosts, the trees may be removed without any additional studies or mitigation.

2. **SCOPE OF WORK.** The Services will be performed in general conformance with industry standards and will consist of the following:

- Perform an Emergence Survey for the Indiana Bat and Northern Long-eared Bat, as per Appendix E of the USFWS's 2017 Range-Wide Summer Survey Guidelines.
  - A visual field survey of the three potential roost trees will be conducted to establish the presence or absence of the listed species. An ultrasonic acoustic meter will be used to help establish the species of any present bats. As per the Guidelines, the survey will take place between May 15<sup>th</sup> and August 15<sup>th</sup>, during the hour before and hour after dusk, with each potential roost assessed individually.
  - Shelby County will be immediately notified of the findings of the survey for each roost. If no bats are present at a roost tree, the USFWS requires the roost tree to be removed within 24 hours of the survey.
- Prepare a survey report detailing methods used and findings.

**Down-to-earth partners. Sky's-the-limit solutions.**

- Provide this survey report for submittal to the USFWS in order to receive a project clearance letter.

A. The Scope of Work does not include:

- Design and construction review services relating to any safety precautions or means, methods, techniques, sequences, or procedures performed as a result of the Services.

B. Standard of Care. Tioga warrants that the Services will be performed in accordance with generally accepted professional practices for the Purpose set forth herein, and Tioga makes no further warranty, express or implied.

C. Collateral Opinions. Any opinion of remediation costs, construction costs or other costs or procedures provided by Tioga collateral to the Services represents Tioga's judgment as a design professional and is supplied, for informational purposes only, as an accommodation to Client. Client acknowledges that Tioga has no control over the cost of labor or material, or over competitive bidding or market conditions. Tioga does not represent such opinions to be accurate to any degree of professional certainty, does not guarantee such opinions and does not warrant such opinions in any way.

3. **COMPENSATION.** Client will pay Tioga for the Services a lump sum fee of **\$3,000**. Tioga will deliver an invoice to Client upon project completion and it will be due and payable in full within 30 days thereafter. Client acknowledges that the fee is based upon the description of the Services, Scope of Work and the Schedule as set out in this Agreement. Any revision to any of the Services, Scope or Schedule will result in a revision to the fee.

4. **SCHEDULE.** Tioga will commence performance of the Services promptly after receipt of written acceptance of this proposal and Tioga's receipt of all deliverables included within Client Responsibilities. Due to the time critical nature of this project, Tioga will coordinate with Client prior to beginning field work to verify Client's availability to provide follow-up services (tree removal). Unless provided otherwise in this letter, receipt of all of same will constitute Client's notice to proceed. If there are delays for reasons beyond Tioga's control, Tioga and Client will revise this Agreement in good faith to revise the delivery dates.

5. **CLIENT RESPONSIBILITIES.** Client will provide Tioga with all information in Client's possession which is relevant to the Services and which is believed by Client to be helpful in Tioga's performance of the Services. It is Tioga's expectation that the information furnished by Client will include all information concerning any special or extraordinary services needed, as well as all available and pertinent information and data relevant to the Services. Client may, however, in its sole discretion, withhold any information or services it desires. Tioga shall not be responsible or liable for any claims, damages, or consequences resulting from material information not disclosed by Client to Tioga. Client further acknowledges that any information withheld from Tioga may reduce the effectiveness and accuracy of the work product.

A. Client hereby designates Tom Needham as the person to act with authority on its behalf with respect to the Services. Client will examine and respond promptly to Tioga's submissions, and will give prompt written notice to Tioga whenever it observes or otherwise becomes aware of any defect in the Services.



B. Tioga hereby designates Ben Day as the person to act with authority on its behalf with respect to the Services.

C. Not later than Notice to Proceed, Client will provide to Tioga:

- All criteria and full information as to Client's requirements for the Services.
- A right-of-entry to the Property providing Tioga all legal rights to be on the Property and to perform the Services thereon.
- The name and contact information of a person, at the Property, who can provide access to all areas of the Property.
- Full and complete information regarding any restrictions or special access requirements applicable to or concerning the Property.
- Full and complete information regarding any known environmental conditions at the site (i.e., hazardous materials or processes, specialized protective equipment requirements, unsound structural members, etc.).

6. **RELIANCE BY THIRD PARTIES.** Unless agreed otherwise in writing, Tioga will provide the Services pursuant to this Agreement solely for the benefit of Client. No third party may rely on the Services or any portion thereof, including reports issued by Tioga, regardless of any agreement between such third party and Client, unless Tioga has issued a reliance letter directly to such third party. Any reliance letter issued by Tioga will be subject to the same terms and conditions as are applicable to this Agreement.

7. **ENTIRE AGREEMENT.** This proposal and the General Provisions attached hereto represent the entire understanding between Client and Tioga with respect to the Services and may only be modified in writing signed by both parties. In the event of a conflict between the terms of this letter and the General Provisions, the terms of the General Provisions will control.

Once signed on behalf of Client, this proposal will become a binding contract between the parties on the terms stated herein if approved by Purchasing. If this proposal satisfactorily sets forth your understanding of the arrangements between Client and Tioga, please date and sign it in the space provided below and return it to us.

This proposal is valid for 30 days following the date of issue.

**Tioga Environmental Consultants, Inc.**



By: Ben Day  
Senior Environmental Scientist

**Shelby County, TN**

Terms and conditions are acceptable. Approved for Purchasing to issue the Purchase Order.



By: Tom Needham  
Director of Public Works

## GENERAL PROVISIONS

Attached to and made a part of the Letter Agreement by and between Shelby County, TN ["Client"] and Tioga Environmental Consultants, Inc. ["Tioga"] dated March 7, 2018.

### SECTION 1. PAYMENT OF THE FEE

A. If Client fails to make any payment as and when due, Tioga may, after giving seven days' written notice to Client, suspend services under this Agreement, and retain all work product deliverable to Client until payment is made. The Services completion date will be automatically extended by the number of days Services are suspended.

B. Invoices which remain unpaid sixty (60) days after the date of the invoice may result in the cessation of all work on the Services. If payment has not been received after ninety (90) days following the date of the invoice, a stop work order will be issued.

C. In the event any invoice is not paid as and when due, Client agrees to pay all reasonable collection costs and attorneys' fees incurred by Tioga.

D. The client will not withhold, deduct or set off any penalties, liquidated damages or other costs incurred by Client arising out of the Services, or otherwise.

E. If completion of the Services is delayed or suspended for a period in excess of three months for reasons beyond Tioga's control, any other provision of this Agreement to the contrary notwithstanding, Tioga may, after giving seven days written notice to Client, terminate this Agreement, and Client will compensate Tioga in accordance with the termination provision contained in this Agreement.

**SECTION 2. ASSIGNMENT.** This Agreement may not be assigned by either party without the express written consent of the other party hereto. Tioga routinely delegates certain portions of the Services (such as laboratory analysis, soil boring and abatement of hazardous materials) to subcontractors who specialize in the provision of such services. Client hereby consents to such delegation and the selection and retention of subcontractors solely in Tioga's discretion and acknowledges that such delegation does not constitute an assignment or partial assignment of this Agreement.

**SECTION 3. TERMINATION.** This Agreement may be terminated by either party, with or without cause, upon 7 days' written notice.

A. If this Agreement is terminated by either party for any reason, Tioga will be paid the earned portion of the fee as of the termination notice date plus all reimbursable expenses incurred to the termination notice date. The earned portion of the fee will be equal to the prorata portion of the Services performed (as determined in Tioga's reasonable discretion), expressed as a percentage, multiplied by the total fee for the Services.

B. If this Agreement is terminated by Client without cause, Tioga will also be paid 15% of the earned portion of the fee as of the termination notice date as liquidated damages for Tioga's lost revenue, scheduling adjustments, reassignment of personnel and related costs incurred due to termination.

### SECTION 4. MEDIATION.

A. In the event of any dispute between the parties arising out of or in connection with this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to litigation, or some other dispute resolution procedure. Upon written request by either party to this Agreement for mediation of any dispute, Client and Tioga will select by mutual agreement a neutral mediator. Such selection will be made within ten (10) calendar days following the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and Tioga within ten (10) calendar days, a mediator will be chosen from a panel of no less than three mediators identified by both parties. Nothing in this section may be construed to limit the right of either party to any remedy which may be obtained without resort to litigation or other legal action.

B. All mediation proceedings will take place in Shelby County, Tennessee unless Tioga and Client agree otherwise. The fees of the mediator will be apportioned equally between the parties.

C. Notwithstanding any other provisions of this Article or any provision of law or principle in equity, including any applicable statute of limitation, the parties hereby expressly agree that no claim arising out of or in connection with this Agreement, or the breach thereof, may be brought, or demand for mediation made, more than two years following the earlier of: (i) the date the party making the claim knew or should have known of the breach or dispute; or (ii) the date of substantial completion of the Services.

**SECTION 5. FORCE MAJEURE.** Neither party will be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable pursuant to this Agreement) to the extent said failures or delays: (i) are beyond that party's reasonable control and occur without its fault or negligence; and (ii) are proximately caused by strikes, lockouts, unavailability of labor or materials, governmental restrictions, enemy act, war,

riots or other civil commotion, fire or other casualty, adverse weather conditions, including, without limitation, ice or snow storms, freezing conditions, floods, tornadoes, lightning, earthquakes and other acts of God.

**SECTION 6. NO WAIVER.** No waiver by either party of any default in performance on the part of the other party, or of any breach or series of breaches, or of any term, or failure to strictly enforce any provision, term, covenant or condition of this Agreement will constitute a waiver of the performance of, or of any subsequent breach of, any provision, term, covenant or condition.

**SECTION 7. ENFORCEABILITY.** If any provision of this Agreement, or the application of any such provision to any person or circumstance, is held by any court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, will be construed as if the void or unenforceable provision were not included in this Agreement.

**SECTION 8. INDEMNITY.** Client agrees to defend, indemnify, and hold harmless Tioga, its officers, directors, employees, agents and representatives from and against all liabilities, claims, demands, losses, costs, damages, actions, suits, or other proceedings made, arising out of, or in connection with, this Agreement or Tioga's performance of work hereunder, including a claim for any environmental pollution or contamination (including without limitation, any actual or threatened release of toxics, irritants or pollutants, or waste gases, liquids, or solid materials) provided that Tioga has not been found by a court of competent jurisdiction to have committed gross negligence in the performance of its duties hereunder.

**SECTION 9. LIMITATION OF LIABILITY.** Client and Tioga agree to limit the liability of Tioga as provided in this section.

A. If Tioga makes recommendations to Client arising out of the performance of the Services or otherwise related to the Project, and those recommendations are not implemented or otherwise adhered to by Client in their entirety, Tioga will have no liability to Client for any claim or cause of action, of any type, arising out of this Agreement or out of the Services.

B. If a claim of loss, injury, death, damage or expense arises out of or relating to a portion of the Services delegated to a subcontractor, Tioga's liability for such claim will be limited to damages arising directly from the negligent or intentional acts or omissions of Tioga and not the acts or omissions of such subcontractor.

C. In addition to the foregoing limitations, and given the comparatively small fee charged by Tioga in comparison to the potential risk, in the absence of a finding by a court of competent jurisdiction of gross negligence on the part of Tioga in the performance of its duties hereunder, to the fullest extent permitted by law, the total aggregate liability of Tioga, its employees, agents and subcontractors, for claims of loss, injury, death, damage or expense will not exceed the lesser of: (i) \$50,000.00; or (ii) the fee payable to Tioga pursuant to this Agreement. Such causes include, but are not limited to Tioga's negligence, errors, omissions, breach of contract, breach of warranty, strict liability, negligent misrepresentation, statutory liability, or other acts giving rise to liability based upon contract, tort, or statute.

D. The provisions of this Section 9 will control over any conflicting provisions of this Agreement and any other agreement to which either party hereto is a party.

**SECTION 10. GOVERNING LAW AND JURISDICTION.** This Agreement, made and entered into at Memphis, Tennessee, will be construed in accordance with the laws of the State of Tennessee. In the event of any litigation arising out of or in connection with this Agreement, the parties hereby consent to the jurisdiction and venue of the courts of the State of Tennessee located at Memphis, Tennessee or the United States Federal District Court for the Western District of Tennessee located at Memphis, Tennessee. Each party hereby waives any defense or objection sounding in jurisdiction or venue.

**SECTION 11. NOTICES.** All notices which are required or may be given pursuant to this Agreement will be in writing and will be sufficient if delivered personally or mailed by certified mail, postage prepaid, to the parties at the addresses set out in this Agreement or such other addresses as the parties may hereafter notify one another.

**SECTION 12. INSURANCE.** Tioga will acquire and maintain in force statutorily required workmen's compensation insurance, employer's liability, and comprehensive general liability insurance, all in amounts reasonable calculated to cover its risk hereunder.

**SECTION 13. DESCRIPTIVE HEADINGS.** Titles to the sections and subsections herein are for descriptive purposes only. They will not be used to construe the meaning of any provision of this Agreement.

**SECTION 14. BINDING EFFECT.** The terms, conditions and restrictions of this Agreement will be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and permitted assigns.