



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

OFFICE COPY

Purchase Order No.
 P029874

Issue Date
 01/04/18

Purchase Order

Vendor No.	Delivery Required	Terms	Ship Via	F.O.B.	Requisition No.
A2829	06/30/18	N30		DEST	R064266

Issued To: **TIIGA 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 #: MBLOS8-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	UM	Description	Unit Price	Extended Price
1			ENCUMBRANCE OF FUNDS TO PERFORM A HABITAT ASSESSMENT SURVEY PER PROPOSAL SUBMITTED BY BEN DAY DATED 12/28/2017. COMMODITY: 926/83 ACCOUNT DISTRIBUTION: 297-271272-6678	4500.00000	4500.00
Total of Purchase Order					4500.00

Activity being billed for on attached invoice(s)
 have been received and that payment is in order.
 This is a final 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
 125 N. MAIN, RM 468
 MEMPHIS, TN 38103
 901-576-7197

SYLVIE LE BOUTHILLIER
 APPROVED: ADMINISTRATOR OF PURCHASING

1/9/18
 Date

[Signature]
 Authorized Signature

TERMS AND CONDITIONS

- VENDOR:** Shall in all cases be the Seller.
- BUYER:** Shall in all cases be the Shelby County Government/Purchasing Department.
- 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.
- 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, handling, 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.
- 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 name, 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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 herein were purchased by the Buyer on a formal bid form, then NO change in above will be made.
- 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.
- 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 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.
- PATENT INDEMNIFICATION:** 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.
- 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 notice 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.
- 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.
- CONFLICT OF INTEREST:** No part of the total contract under 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.
- 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).
- 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.
- 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.
- 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.



December 28, 2017

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

RE: Habitat Assessment
Wolf River Greenway Resiliency Project
Rodney Baber Park, Kennedy Park & Orchi Road
Shelby County, TN

Dear Mr. Needham:

This letter, including the attached General Provisions, is provided in response to your request for professional consulting services including a habitat assessment for the Indiana Bat and Northern Long-eared Bat (the "Services") with respect to Rodney Baber Park, Kennedy Park, and Orchi Road (the "Property") relative to the Wolf River Greenway 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. Documentation regarding the presence of suitable bat habitat within the project area may be necessary in order to obtain clearance to proceed with the project from the United States Fish and Wildlife Service ("USFWS").

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

- Perform a Habitat Assessment for the Indiana Bat and Northern Long-eared Bat, as per Appendix A of the USFWS 2017 Range-Wide Summer Survey Guidelines.
 - A field survey of the three Client-provided project areas will be conducted to identify potential habitat. Locations of suitable habitat will be marked in the field and recorded using GPS for later mapping.
 - An assessment report will be prepared detailing methods used, findings, and an assessment of habitat suitability.
- Provide this assessment for submittal to the USFWS in order to receive a project clearance letter.

A. The Scope of Work does not include:

- A presence/absence survey for the bats.
- Habitat surveys for other threatened or endangered species.

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

- 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 \$4,500. 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. 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 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.

See
NOTE

if approved by purchasing

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

Tioga Environmental Consultants, Inc.

Shelby County, TN

By: Ben Day
Ben Day
Senior Environmental Scientist

By: Tom Needham
Tom Needham
Director of Public Works

Terms and conditions
are acceptable. Approved
for purchasing to issue
purchase order

Single Source Request – Provide an Indiana Bat habitat survey for Wolf River Activity for Shelby County’s NCDR Grant Application, approved by the United States Department of Housing and Urban Development.

Re: Tioga Environmental Consultants, Inc.

The Public Works Division is the managing all consultants required to provide the environmental, survey, design and construction for the HUD NCDR resiliency Grant. The environmental for the Wolf River activity requires that report include a Indiana Bat Habitat Assessment. The HUD purchasing requires that any new service must be offered to any qualified Section 3 firm in Shelby County. The county has reviewed the HUD Web site listing professional engineering firm and contact the two firms listed. Both firms (ACOT Associates and ABES engineering) has stated that they do not have the expertise to provide this service. See attached emails. Tioga Environmental is presently a member of the BWSC team on the Big Creek project and will be working with that team by providing environmental reports including the Bat Assessment. By utilizing Tioga, we have a firm that is familiar with the Grant requirements, the specifics of the type survey to meet the Federal requirements and is a vendor with Shelby County. Although the HUD purchasing rules prohibits the county from enforcing local requirements, Tioga is a WBE and an LOSB.

The scope of project required for this assessment is as follows:

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. Documentation regarding the presence of suitable bat habitat within the project area may be necessary in order to obtain clearance to proceed with the project from the United States Fish and Wildlife Service ('USFWS').

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

- Perform a Habitat Assessment for the Indiana Bat and Northern Long-eared Bat, as per Appendix A of the USFWS 2017 Range-Wide Summer Survey Guidelines. A field survey of the three Client-provided project areas will be conducted to identify potential habitat. Locations of suitable habitat will be marked in the field and recorded using GPS for later mapping.

An assessment report will be required detailing methods used, findings, and an assessment of habitat suitability.

- Provide this assessment in a format that is required for submittal to the USFWS in order to receive a project clearance letter.

The granting of this Single Source Request will result in significant savings in time by utilize the services of Tioga Environmental as opposed to bringing on a new firm who would require additional training on the Grant requirements to move these projects forward.

The cost for continuing these Professional Services via Tioga shall not exceed Four Thousand, Five Hundred and no/100 (\$4,500.00) Dollars within any one of the next three (3) fiscal years.

Funds are available from the FY2018 , Account Number 27-1072-6678.

Based upon the above, the Public Works Division, is requesting approval of this Single Source Request.

Needham, Tom

To: Solomon Akinduro
Subject: RE: Bat Habitat Survey

Thanks for the offer to seek a partner, however, on this grant, we will require you to provide the service with your full time staff.

Tom Needham
Director Public Works

160 N Main
222-2083
302-7298 Cell

From: Solomon Akinduro [<mailto:dsa@acotassociates.com>]
Sent: Wednesday, December 27, 2017 11:17 PM
To: Needham, Tom
Subject: RE: Bat Habitat Survey

Hi Tom, there is only one project we have done as a subconsultant on Bat Habitat Survey in 2010. However, I can reach out to our partner who has done more of this survey for other agencies and we can join together in this pursuit if it will be of interest to them. If that is fine with you, please let me know.

Thanks,

D. Solomon Akinduro, Ph.D.
CEO



5796 Shelby Oaks Drive, Suite 16A
Memphis, TN 38134
T: 901-266-1653
F: 901-373-8222
Cell: 901-490-7055
Email: dsa@acotassociates.com
www.acotassociates.com

From: Needham, Tom [<mailto:Tom.Needham@shelbycountytn.gov>]
Sent: Wednesday, December 27, 2017 2:53 PM
To: Emmanuel Tuombe (etuombe@abesengineering.com) <etuombe@abesengineering.com>; Solomon Akinduro <dsa@acotassociates.com>
Cc: Vazquez, Jim <Jim.Vazquez@shelbycountytn.gov>
Subject: Bat Habitat Survey

We are requiring an Indiana Bat Habitat Survey for the HUD Resiliency NCDR Grant.

As a professional, listed on the Section 3 HUD site as a provider of professions services, I am checking to see if you have in-house expertise to survey areas to determine if the area, where the project is located, has the habitat desired by the Indiana Bat. If you have that experience, please provide me five projects that you have

completed. If you do not have this specialized experience with your full time staff, Please respond that the expertise is not available within your firm.

Thanks

Tom Needham
Director Public Works

160 N Main
222-2083
302-7298 Cell

Needham, Tom

To: Emmanuel Tuombe
Cc: Vazquez, Jim
Subject: RE: Bat Habitat Survey

Emmanuel

Thanks for your response. The assessment is a one person exercise with some office clerical assistance. I will make the non-Section 3 Firms aware of your availability to assist them on their activity

Tom Needham
Director Public Works

160 N Main
222-2083
302-7298 Cell

From: Emmanuel Tuombe [<mailto:etuombe@abesengineering.com>]
Sent: Thursday, December 28, 2017 8:49 AM
To: Needham, Tom
Cc: Vazquez, Jim
Subject: RE: Bat Habitat Survey

Tom,

Thank you for reaching out to me about the Bat Habitat Survey Opportunity.

I do not have the expertise in my firm to provide Bat Habitat Survey.

I can support firms with such expertise. I can be a sub but not a prime for this. Please consider passing my info to firms looking for Section 3 professional services companies to support them for the Bat Habitat Survey.

Regards,

Emmanuel Tuombe, P.E.
ABES
ENGINEERING
[\(901\) 340-3011](tel:(901)340-3011)

From: Needham, Tom [<mailto:Tom.Needham@shelbycountyttn.gov>]
Sent: Wednesday, December 27, 2017 2:53 PM
To: Emmanuel Tuombe (etuombe@abesengineering.com); 'dsa@acotassociates.com'
Cc: Vazquez, Jim
Subject: Bat Habitat Survey

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As a professional ,listed on the Section 3 HUD site as a provider of professions services, I am checking to see if you have in-house expertise to survey areas to determine if the area, where the project is located, has the habitat desired by the Indiana Bat. If you have that experience, please provide me five projects that you have

completed. If you do not have this specialized experience with your full time staff, Please respond that the expertise is not available within your firm.

Thanks

Tom Needham
Director Public Works

160 N Main
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