*Revised: 07/26/2023*

**CONSTRUCTION AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**ON THE BASIS OF UNIT PRICES**

THIS AGREEMENT made as of the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in the year 2022, by and between the

CITY OF BILOXI, MISSISSIPPI

(hereinafter called OWNER) and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(hereinafter called CONTRACTOR)

WITNESSETH THAT OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1. **WORK**
   1. The intent of the Contract is to provide for the execution, construction, and completion in every detail of the work described, and to compensate the CONTRACTOR for all acceptable work performed in accordance with the provisions of the Contract. The CONTRACTOR shall furnish all labor, materials, equipment, supplies, transportation, supervision, methods and procedures necessary to complete the work in accordance with the specifications and terms of the Contract Documents.
   2. The CONTRACTOR shall perform all work as specified or indicated in the Contract Documents for the completion of the Project generally described as follows:

**PROJECT NAME & NO.**

* 1. CONTRACTOR represents that he has familiarized himself with, and assumes full responsibility for having familiarized himself with, the nature and extent of the Contract Documents, Work locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in manner affect the performance of the Work, and represents that he/she has correlated his/her study and observations with the requirements of the Contract Documents.
  2. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. He shall at once report in writing to Engineer any conflict, error discrepancy which he may discover; however, he shall not liable to OWNER or Engineer for his failure to discover any conflict, error or discrepancy in the Drawings or Specifications.

1. **ENGINEER**
   1. The project has been designed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ located at 123 Main Street, Biloxi, Mississippi 39530, who is known as the DESIGN ENGINEER throughout the specifications. The City Engineer for the City of Biloxi Engineering Division will act as ENGINEER in connection with completion of the Project in accordance with the Contract Documents. It is understood that the City Engineer may designate authority to any member of his staff, as he deems necessary.
   2. The Engineer has the authority to make decisions on all questions that may arise as to the quality and acceptability of materials, the Work, and progress of the Work; all questions that may arise as to the interpretation of plans and specifications; and all questions as to the fulfillment of the Contract.
   3. The Engineer has the right, but not the obligation, to suspend work wholly or in part and to withhold payments because of the CONTRACTOR’S failure to correct conditions unsafe for workmen or the general public, for failure to carry out provisions of the Contract Documents, or for failures to carry out orders. The Engineer may also suspend Work for periods deemed necessary due to unsuitable weather conditions, for any conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the Engineer to be in the public interest. The OWNER shall not be held liable for any conditions that it is not made aware of, and there is no duty on the part of the OWNER to inspect for said unsafe and/or unsuitable conditions. The duty to ensure that the conditions are safe to workmen and the public remains at all times on the CONTRACTOR, and shall not be altered by any course of conduct and/or action or inaction of the OWNER.
   4. The Engineer will have the authority to enforce and make effective all decisions and orders relating to the Contract Documents.
2. **CONTRACT TIME**
   1. The work herein described shall be completed within one hundred (100) Calendar days for the project after the date of the Contract Time commences, also known as the Notice to Proceed Date. This date is established by the date on the Notice to Proceed order.
   2. The CONTRACTOR shall provide sufficient materials, equipment and labor to guarantee the completion of the project in accordance with the plans and specifications within the Contract Time.
   3. Percent complete shall be determined by comparing the total money earned to date by the CONTRACTOR, minus any payment for advancement of materials, to the total dollar amount of the Contract. The percentage elapsed time shall be calculated as the direct ratio of the expired Calendar Days to the total Calendar Days provided for in the Contract.
   4. When the “percent complete” lags more than twenty percent (20%) behind the “percent time lapsed,” the Engineer shall notify the CONTRACTOR that they have seven (7) calendar days to submit a written statement and revised progress schedule indicating any additional equipment, labor, materials, etc. to be assigned to the work to ensure completion within the specified Contract Time. Failure to submit the revised schedule may result in withholding of the monthly estimate. When the “percent complete” lags more than forty percent (40%) behind the “percentage of elapsed time,” the Contract may be terminated.
   5. On Calendar Day Contracts, an extension of Contract Time may be granted for unforeseen utility delays, abnormal delays caused solely by the OWNER or other governmental authorities, or unforeseeable disastrous phenomena of nature of the magnitude of earthquakes, hurricanes, named tropical storms, tornadoes, or flooded essential work areas that are deemed to unavoidably prevent prosecuting the work.
   6. The span of time allowed in the Contract as awarded is based on the quantities used for comparison of bids. If satisfactory fulfillment of the Contract requires performance of work in greater quantities than those set forth in the proposal, the time allowed for completion shall be increased by Calendar Days in the same ratio that the cost of such added work increases the total value of the original Contract. This is exclusive of the cost of work altered by an approved Change Order for which a time adjustment has already been made.
   7. Additional Contract Time for weather days will be determined using the Keesler AFB monthly climatology report. Additional Contract Time may be approved for any days that have precipitation of 0.5 inches or greater, day for day. Weather days will not be automatically granted, in order to be considered, a request for weather days shall be included in the monthly schedule update submitted with the pay estimate. To justify days in addition to the days reported by the Keesler climatology reports, the Contractor is required to provide an updated schedule showing the impact along with a written narrative and/or pictures with the monthly schedule update.
3. **CONTRACT PRICE**
   1. CONTRACTOR submitted the approved bid for the performance of the work described in the Contract Documents in the total sum of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

* 1. The total sum above is based on estimated quantities for each pay item. The actual payment to the CONTRACTOR shall be subject to the actual quantity of approved work performed and the terms and conditions of this Contract. The total Contract price shall not exceed the amount of the approved bid unless otherwise approved by the OWNER.

1. **CONTRACT DOCUMENTS**
   1. The Contract Documents, which comprise the Contract between the OWNER and CONTRACTOR, consists of the following documents, which documents are made a part of this agreement as fully as if disclosed and written at length and made a part thereof:
      1. This agreement (Pages 1 through 6, inclusive),
      2. Exhibits to this Agreement,
      3. CONTRACTOR’S Proposal and Bonds,
      4. Notice of Award,
      5. Advertisement, Section 901
      6. Testing and Submittal Requirements
      7. Notice to Bidders, Section 904,
      8. Special Provisions, Section 907,
      9. Technical Specifications, including the Mississippi Standard Specifications for Road and Bridge Construction, 2017 Edition, Excluding Division 900, if applicable,
      10. Drawings consisting of sheet 1 of \_\_\_\_\_\_\_\_, thru \_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_,
      11. Any Addenda to the Contract Documents.
      12. Any modifications, including Change Orders, duly delivered after execution of this Agreement, and
      13. Notice to Proceed.
   2. The Contract Documents constitute the entire agreement between OWNER and CONTRACTOR and may be only altered, amended or repealed by a duly executed written instrument.
2. **SUBCONTRACTORS**
   1. Neither the OWNER nor CONTRACTOR shall, without the prior written consent of the other, assign or sublet in whole or in part his interest under any of the Contract Documents; and, specifically, CONTRACTOR shall not assign any moneys due or to become due without prior written consent of OWNER.
   2. CONTRACTOR agrees to procure SUBCONTRACTORS in a fair and nondiscriminatory manner.
   3. CONTRACTOR shall ensure that each SUBCONTRACT includes all the provisions of this Contract. CONTRACTOR is responsible for monitoring all SUBCONTRACTORS to ensure compliance with the provisions contained herein.
   4. CONTRACTOR shall not enter into any SUBCONTRACT without the written approval of OWNER.
   5. Subcontracting does not release CONTRACTOR of bond and Contract liability and shall not be construed to imply that a Contract exists between the OWNER and a third party.
3. **CONTROL OF WORK**
   1. CONTRACTOR shall supervise and direct the work efficiently and with his best skill and attention. He shall be responsible to see that the finished work complies accurately with the Contract Documents.
   2. CONTRACTOR shall keep on the work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and Engineer except under extraordinary circumstances. The superintendent will be CONTRACTOR’S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR. The CONTRACTOR shall furnish in writing the name of his resident superintendent and telephone numbers where he may be reached in the event of emergencies.
   3. CONTRACTOR shall keep one record copy of all Specifications, Drawings, Addenda, Modifications and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. These shall be available to Engineer and shall be delivered to him for OWNER upon completion of the Project.
   4. CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work, and at the completion of the Work he shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for use. CONTRACTOR shall restore to their original condition those portions of the site not designated for alteration.
   5. In case of the suspension of Work from any cause whatever, CONTRACTOR shall be responsible for all material, shall properly store them, if necessary, and shall provide suitable drainage of the area and erect temporary structures where necessary.
   6. CONTRACTOR shall confine his equipment, the storage of materials and equipment and the operations of his workmen to areas permitted by law, ordinances, permits or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with materials or equipment. CONTRACTOR shall not enter or occupy with men, tools, or material any private ground without the consent of the owner of said private property.
4. **CONTROL OF MATERIALS**
   1. CONTRACTOR shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliance, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.
   2. All materials and equipment shall be new, except as otherwise provided in the Contract Documents. If required by Engineer, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
   3. All materials and equipment shall be applied, installed, connected, erected, raised, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the Contract Documents.
   4. For all manufactured articles, units, components, or materials incorporated in the work completed under this Contract, CONTRACTOR shall furnish the manufacturer’s warranties, guarantees, instruction sheets, and technical specification sheets before final acceptance of work.
   5. All materials not conforming to the requirements of the specifications at the time they are incorporated in the Work shall be rejected and removed immediately unless otherwise instructed by the Engineer.
   6. In compliance with the laws of the State of Mississippi, in choosing materials for the project, the successful bidder shall be required to give preference to materials grown, produced, prepared, made or manufactured within the State of Mississippi. The foregoing notwithstanding, no preference shall be given to materials grown, produced, prepared, made or manufactured in the State of Mississippi when other materials of like quality produced outside the State of Mississippi may be purchased or secured at less cost, or any other materials of better quality produced outside the State of Mississippi can be secured at a reasonable cost.
   7. The CONTRACTOR shall not use any materials on the project that are grown, produced, prepared, made or manufactured outside the United States.
   8. Any materials to be used as a substitute to any material specified in the Contract shall be approved by the Engineer, or his authorized representative, prior to use. The CONTRACTOR shall be responsible for submitting all information needed by the Engineer to show all properties, characteristics, test reports, etc. to make an informed decision as to the compliance of the proposed material with the Contract.
   9. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by him in accordance with the law of the place where the Work is to be performed.
   10. CONTRACTOR warrants and guarantees that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality and free from faults or defects and in accordance with the requirements of the Contract Documents and of any inspections, tests or approvals referred to in the Technical Specifications.
   11. All tests, inspections and submittals shall be submitted to the OWNER in accordance with the Technical Specifications.
5. **PROGRESS SCHEDULE**
   1. The CONTRACTOR shall submit a progress schedule to the City Engineer or his authorized representative for his approval no later than three (3) working days after the Notice to Proceed date. The schedule will be in the form of a bar graph indicating the controlling phases of work, the bid sheet sequence numbers of all pay items in each phase, and the beginning and the ending time for each phase. At least one phase of work will be shown to begin no later than the date for beginning of Contract Time, and at least one phase of work will be shown to be in progress until all work is scheduled to be complete. The schedule shall indicate the sequence and interdependency of all Work activities.
   2. The CONTRACTOR’S progress schedule shall reflect a realistic rate of prosecution with all work to be completed within the specified Contract Time. In preparation of his progress schedule, the CONTRACTOR shall take into consideration all controlling factors and specified limitations. The schedule shall show work broken down by street name (if applicable) and then by station number so that a logical progress of work can be followed.
   3. An approved progress schedule shall be in effect until the date on which a revised schedule is approved. The approved progress schedule will be the basis for establishing major construction operations, Contract Time assessment, and for checking the progress of the work.
   4. On projects with a Contract Time of more than eight (8) months, an updated progress schedule shall be delivered to the OWNER with each pay request. Failure to submit an up to date progress schedule shall stop the pay estimate process. The pay estimate will be held or returned to the CONTRACTOR until an updated schedule is submitted. Any revisions to the progress schedule shall be submitted to the OWNER for approval.
   5. Monthly schedule updates shall include the following:
      1. Activity Status Report
      2. Proposed Revisions (or changes in construction sequence) Report
      3. Narrative Report containing the following information:
         1. Description of overall Project status
         2. Description of problem areas
         3. Current and anticipated delays to include the cause of delay; corrective action and adjustments of schedule to correct the delay; and any known or potential impact of the delay on other activities or milestones
         4. Pending items and status thereof, including but not limited to:
            1. Pending Change Orders that include time extensions
            2. Other Issues relating to Contract Time (weather, material delivery, etc.)
         5. Contract Completion Date Status:
            1. If ahead of schedule, note the number of calendar days ahead
            2. If behind schedule, note the number of calendar days behind
         6. Any Other Project or Schedule Issues/Concerns
   6. Whenever it becomes apparent from the current monthly updated Schedule that the Contract completion date will not be met, the CONTRACTOR agrees that they will take some or all of the following actions. However, these actions must first be reviewed and approved by the OWNER. These actions will be taken by the CONTRACTOR at NO additional cost to the OWNER.
      1. Increase construction manpower to eliminate the backlog of work.
      2. Increase the number of hours worked per day and/or shift, increase the number of days worked per week, etc. However, this shall not be construed as permitting the CONTRACTOR to violate the OWNER’S work hour restrictions per Ordinance.
      3. Reschedule activities to expedite the work and eliminate the backlog of work.
   7. Any requests for an adjustment in Contract Time shall be submitted by the CONTRACTOR in writing and shall include a Time Impact Analysis. Each Time Impact Analysis shall provide information justifying the request and stating the extent of the adjustment requested for each specific change or alleged delay. This analysis shall be done at no additional cost to the OWNER.
6. **CHANGES TO WORK**
   1. OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by Change Orders. Upon receipt of a Change Order, CONTRACTOR shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price, or an extension or shortening of the Contract Time, an equitable adjustment will be made. Change Orders may not alter unit prices established under the Contract Documents.
   2. Engineer may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. If CONTRACTOR believes that any minor change or alteration authorized by Engineer entitles him to an increase in the Contract Price, CONTRACTOR may make a claim as provided by law.
   3. Additional Work performed by CONTRACTOR without authorization of a Change Order will not entitle him to an increase in the Contract Price or an extension of the Contract Time.
   4. CONTRACTOR will provide immediate notification to the Engineer upon discovering a condition that may require a change to the Contract Documents. The notification will include (1) a description of the condition, including the time and date it was identified; (2) an explanation of why the condition represents a change to the Contract Documents; and (3) a statement of all changes considered necessary to the Contract Price and Contract Time.
7. **ACCEPTANCE OF WORK**
   1. OWNER will monitor the performance of CONTRACTOR against goals and performance standards required herein. Substandard performance as determined by OWNER will constitute non‑compliance with this agreement. If action to correct such substandard performance is not taken by CONTRACTOR within a reasonable period of time as determined by the OWNER after being notified by OWNER, Contract suspension or termination procedures will be initiated.
   2. All materials and parts or detail of the work are subject to inspection by the Engineer. The Engineer shall be allowed access to all of the Work and shall be furnished with such information and assistance by the CONTRACTOR as necessary to make a complete and detailed inspection.
   3. Unacceptable work, whether the result of poor workmanship, defective materials, damage through carelessness or any other cause, found prior to final acceptance of work shall be removed and replaced in an acceptable manner at no additional cost to the OWNER.
   4. Engineer will have authority to disapprove or reject Work which is “defective,” which term is hereinafter used to describe Work that is unsatisfactory, faulty, or defective, or does not conform to the requirements of the Contract Documents, or does not meet the requirements of any inspection, test or approval, or has been damaged prior to approval of final payment. Engineer will also have authority to require a special inspection or testing of the Work, whether or not the Work is fabricated, installed or completed.
   5. Until the acceptance of the work by Engineer, as evidenced in writing, it shall be under the charge and care of CONTRACTOR. He shall take every necessary precaution against damages to any party thereof by the action of the elements or from any other cause whether arising from the execution or from the non‑execution of the work. Before final acceptance, CONTRACTOR shall at his expense rebuild, restore, repair and make good at his own expense all injuries or damages to any portion of the Work occasioned by any of the above causes.
8. **LIQUIDATED DAMAGES**
   1. If the CONTRACTOR fails to complete the Work within the Contract Time and all approved Change Orders, a deduction calculated from the daily charges listed in the below schedule will be made from money due to the CONTRACTOR, not as penalty but as liquidated damages. The daily charges set out in the schedule of liquidated damages are based on an approximated average cost to the OWNER for maintaining engineers, inspectors and other employees. The CONTRACTOR and the CONTRACTOR’S Sureties shall be liable for all liquidated damages in excess of money due the CONTRACTOR.

|  |  |  |
| --- | --- | --- |
| **Original Contract Amount** | |  |
| **From More Than** | **To and Including** | **Daily Charge Per Calendar Day** |
| $ 0.00 | $100,000.00 | $150.00 |
| $100,000.00 | $500,000.00 | $360.00 |
| $500,000.00 | $1,000,000.00 | $540.00 |
| $1,000,000.00 | $5,000,000.00 | $830.00 |
| $5,000,000.00 | $10,000,000.00 | $1,200.00 |
| $10,000,000.00 | $20,000,000.00 | $1,800.00 |
| $20,000,000.00 | -------------------- | $3,500.00 |

1. **PERMITS**
   1. CONTRACTOR is responsible for any permits, and is required to comply with all codes, ordinances, rules, regulations, orders and other legal requirements of public authorities which bear on performance of work.
2. **BONDS**
   1. Within ten (10) days of receiving the Notice of Award, the CONTRACTOR shall execute and deliver to the OWNER a performance bond or bonds in a sum equal to the full Contract Price. The form of the bond(s) shall be that provided by the OWNER. The bond shall be negotiated for, procured from and the premium paid to a qualified surety agent as listed below. The bonds may be made by any surety company which is authorized to do business in the State of Mississippi and listed on the United States Treasury Department’s list of acceptable sureties, or such bonds may be guaranteed by a personal surety as otherwise provided for in the Mississippi Code of 1972 as referenced below. The bond shall be signed or countersigned by a qualified surety agent and also bear the signature of an “attorney-in-fact” of the surety. (Reference is made to Section 31-5-51 et seq. of the Mississippi Code of 1972, Annotated, and other State statutes applicable thereto).
   2. Except as otherwise provided herein, for a personal surety, no surety or surety company shall be allowed to guarantee or write bonds or construction, alteration or repair of a public building or for public work, unless that surety is listed on the United States Treasury Department’s list of acceptable sureties.
   3. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, or is revoked, CONTRACTOR shall within five (5) days thereafter substitute another Bond and Surety, both of which shall be acceptable to OWNER.
   4. Failure of the CONTRACTOR to provide an acceptable bond and all fully executed Contract Documents, within twenty (20) days of the mailing of the Notice of Award shall be just cause for the cancellation of the Contract. In the event the Contract is cancelled due to the failure of the CONTRACTOR to timely provide the bond and all fully executed Contract Documents, the CONTRACTOR’S proposal guaranty shall be forfeited. Award may then be made to the next lowest responsible bidder, or the work may be re-advertised at the discretion of the OWNER.
   5. It is CONTRACTOR’S responsibility to notify his Surety of any changes affecting the general scope of the Work. CONTRACTOR shall furnish proof of such adjustment to OWNER.
3. **LEGAL RELATIONS** 
   1. CONTRACTOR represents that he has made himself familiar with all state laws and local ordinances and regulations which in any manner affect those engaged or employed in the Work or the material or equipment used in the proposed construction or which in any way affect the conduct of the work and no plea of misunderstanding will be considered on account of ignorance thereof.
   2. The CONTRACTOR shall procure all permits, and licenses, pay all charges, fees and taxes and issue all notices necessary and incidental to the due and lawful prosecution of the work.
   3. CONTRACTOR agrees to comply with the Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.
   4. CONTRACTOR and his SUBCONTRACTORS shall abide by the requirements of 41 CFR 60-1.4(b). These regulations prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing or disclosing compensation. Moreover, these regulations require that covered CONTRACTORS and SUBCONTRACTORS take affirmation action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
   5. CONTRACTOR agrees to comply with the requirements of the Secretary of Labor in accordance with:
      1. the Davis‑Bacon Act as amended (40 USC 3141 et seq.; 29 CFR Part 5, Subpart A)
      2. the provisions of Contract Work Hours and Safety Standards Act (40 USC 3701 et seq.; 29 CFR Part 5),
      3. the Copeland "Anti‑Kickback" Act (40 USC 3145 et seq.; 29 CFR part 3)

and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Contract. CONTRACTOR shall maintain documentation, which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to OWNER for review upon request.

* 1. CONTRACTOR agrees to comply with the requirement of Miss. Code Ann. §31-5-27, the “Mississippi First Act.” CONTRACTOR shall maintain documentation, which demonstrates compliance with the Mississippi First Act. Such documentation shall be made available to OWNER for review upon request.
  2. Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions, which are unsanitary, hazardous or dangerous to the participants' health or safety.
  3. Participants employed or trained for inherently dangerous occupations, shall be assigned to work in accordance with reasonable safety practices.
  4. CONTRACTOR agrees to comply with the following regulations insofar as they apply to the performance of this Contract (applies to Contracts or sub-Contracts in excess of $100,000):
     1. Clean Air Act, 42 U.S.C., 7401, et seq. as amended
     2. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended 1368 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
     3. Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 15, as amended.
     4. 37 CFR Part 401, Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.
     5. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
     6. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

1. **PUBLIC CONVENIENCE AND SAFETY**
   1. The CONTRACTOR shall provide and maintain adequate sanitation facilities for the use of his employees. The location of such accommodations shall be subject to the prior approval of the Engineer.
   2. The CONTRACTOR shall be responsible for the preservation of public and private property. The CONTRACTOR shall be responsible for all damage or injury to public or private property resulting from any act, omission, neglect, misconduct, inefficiency, method of executing the work, or non-execution thereof or due to defective work or materials.
   3. CONTRACTOR shall restore each job site at his own expense to a condition equal to that existing before the damage or injury. In the case of failure on the part of the CONTRACTOR to restore or make good such damage or injury, the Engineer may, upon forty-eight (48) hours written notice, proceed to repair, rebuild or otherwise restore such property and the cost thereof shall be deducted from monies due to which may become due the CONTRACTOR. In the event no monies are available, the amount shall be charged against the CONTRACTOR’S Surety.
   4. CONTRACTOR shall require all workers to wear long pants, shirt, and shoes or boots at all times on the job site.
   5. In the event of an approaching tropical storm, hurricane, etc., the CONTRACTOR shall, at the direction of the Engineer or his authorized representative, prepare the job site by securing any and all materials, equipment, etc. This includes anchoring any job trailer if it is to stay on the site during the storm. The CONTRACTOR shall assure the Engineer that the building is secure and watertight. The CONTRACTOR shall absorb all associated costs.
2. **PROGRESS AND FINAL PAYMENTS**
   1. The compensation, as herein provided, constitutes full payment for the complete Work including all materials, labor, tools, equipment and incidentals necessary for performing the Work under this Contract.
   2. CONTRACTOR shall submit pay requests in accordance with the section entitled “City of Biloxi Testing and Submittal Requirements” of the specification. All applications for payment shall be certified by the CONTRACTOR that to the best of CONTRACTOR’S knowledge, information and belief, the Work covered by the application for payment has been completed in accordance with the Contractor Documents, that all amounts have been paid by the CONTRACTOR for Work for which previous Certificates for Payment were issued and payments received for the OWNER, and that that the current payment shown in the pay application is now due. In addition, all applications for payment shall include certification to the project engineer or architect indicating payments to subcontractors on prior payment request, as required by Miss. Code of 1972, §31-5-25.
   3. OWNER shall make progress payments on the basis of CONTRACTOR'S application for payment as approved by the ENGINEER during the course of this agreement. All progress payments will be on the basis of the approved progress of the work completed and stored to date measured by the schedule of values.
   4. All partial, progress or interim payments or monies owed to CONTRACTOR shall be paid when due and payable under the terms of the Contract. If they are not paid within forty-five (45) calendar days from the date approved by the OWNER, then they shall bear interest in accordance with §31-5-24 of the Mississippi Code of 1972, Annotated.
   5. The Engineer may refuse to approve the whole or any part of any payment if, in his opinion, he is unable to make such representations to the OWNER. Engineer may also refuse to approve any such payment, or because of subsequently discovered evidence or the result of subsequent inspection or tests, nullify any such payment, or any part of any payment, previously approved to such extent as may be necessary in his opinion to protect the OWNER from loss because:
      1. Completed Work or existing property has been damaged by the CONTRACTOR or his Subcontractors, requiring replacement or repair;
      2. The Work for which payment is requested cannot be verified or was not verified by the OWNER at the time of payment, but subsequent verifications revealed discrepancies;
      3. The Engineer or his authorized representative verifies the Work and the OWNER pays for the Work, but subsequent discoveries reveal discrepancies between the Contract and the payment;
      4. Claims or Liens have been filed, or there is reasonable evidence indicating the probable filing thereof;
      5. The Task price has been reduced because of Modifications;
      6. The OWNER has been required to correct defective Work, complete the Work, or maintain traffic control due to unsafe conditions;
      7. Of unsatisfactory prosecution of the Work, including failure to clean up the job site;
      8. Of persistent failure to carry out the Work in accordance with the Contract Documents;
      9. Of liquidated damages payable by the CONTRACTOR; or
      10. Of any other violation thereof, or failure to comply with, the provisions of the Contract Documents.
   6. If, on the basis of Engineer’s observation and review of the Work during construction, his inspection and his review of the Application for Payment, Engineer is satisfied that the Work has been completed and CONTRACTOR has fulfilled all of his obligations under the Contract and has made all corrections to remedy deficiencies in the Work, then the Engineer shall approve payment. Otherwise, he will return the application to CONTRACTOR, indicating in writing his reasons for refusing to approve payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application.
3. **RETAINAGE**
   1. Prior to fifty percent (50%) completion, progress payments will be in an amount equal to ninety-five percent (95%) of the work completed, and ninety-five percent (95%) of material and equipment not incorporated in the work but delivered and suitably stored, less than each case the aggregate of payments previously made.
   2. Once fifty percent (50%) project completion has been obtained, but prior to final completion, progress payments will be in an amount equal to ninety-seven and one-half percent (97.5%) of the work completed, and ninety-seven and one-half percent (97.5%) of material and equipment not incorporated in the work but delivered and suitably stored, less than each case the aggregate of payments previously made; provided that the project is on schedule and all work is satisfactory in the opinion of the City Engineer. At fifty percent (50%) project completion, as described above, fifty percent (50%) of the retainage held to date shall be returned.
   3. Upon final completion of the work and settlement of all claims, OWNER shall pay the remainder of all completed work plus any and all retainage provided the CONTRACTOR has submitted the Record Drawings.
   4. When the Work is finally completed, the total cost to the OWNER will be computed. If the total cost is greater than the cost which would have resulted under the unit prices established under the Contract, the extra expense will be the responsibility of the original CONTRACTOR’S Surety. If the total cost is less than the cost which would have resulted under the unit prices established under the Contract, the savings will be paid to the original CONTRACTOR’S Surety.
4. **FINAL ACCEPTANCE & WARRANTIES**
   1. Upon written notice from the CONTRACTOR of substantial completion of all the major items of work or upon due notice from the Engineer a final inspection will be made by the City Engineer or his authorized representative. If all work provided by the Contract has been completed to his satisfaction, that inspection will constitute the final inspection. If the inspection discloses any work as being unsatisfactory or incomplete, the City Engineer or his authorized representative will discuss in detail with the CONTRACTOR all discrepancies in the work. Upon correction of the work, another inspection will be made which shall constitute the final inspection provided the work has been satisfactorily completed.
   2. Prior to final payment being made, the CONTRACTOR will be required to submit to the City Engineer or his authorized representative, a maintenance guarantee to ensure against defects in workmanship or materials for a time period of two years from the date of final payment with the City of Biloxi named as the sole beneficiary. The guarantee shall be in any of the following acceptable forms:
      1. Certified check from a Mississippi lender based upon a cash deposit, in a form acceptable to the City Attorney;
      2. Irrevocable letter of credit from a Mississippi banking institution in a form acceptable to the City Attorney; or
      3. Surety bond from a Mississippi surety bonding company in a form acceptable to the City Attorney.
   3. CONTRACTOR shall guarantee all work under Contract for a period of two (2) years after the date of final payment by the OWNER for this project (the “Warranty Period”).
   4. If, prior to the expiration of the Warranty Period, or such a longer period of time as may be prescribed by law, any work is found to be defective, CONTRACTOR shall promptly without cost to the OWNER and in accordance with OWNER'S written instructions, either correct such defective work, or, if it has been rejected by the OWNER, remove it from the site and replace it with corrected work. If the CONTRACTOR does not promptly comply with the terms of such instructions, the OWNER may have the defective work corrected or the rejected work removed and replaced and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid for by funds generated through the maintenance guarantee shall be conditioned on the performance of all work necessary to warranty required public infrastructure improvements during the term of the maintenance guarantee, including work needed to repair or replace defects in workmanship or defective materials. Maintenance guarantees shall provide that in case of the CONTRACTOR’S failure to repair or replace the guaranteed work during the term on the maintenance guarantee, the OWNER shall be able to immediately obtain the funds necessary to make such repairs or replacements, including but not limited to costs associated with labor, equipment and materials.
   5. Maintenance guarantee shall be dependent on the total value of the Contract a minimum amount as shown in the table below:

|  |  |
| --- | --- |
| **Amount of Construction Contract** | **Required Bond Value** |
| $0 - $2,500,000 | $250,000 |
| $2,500,000 - $5,000,000 | $500,000 |
| $5,000,000 - $10,000,000 | $750,000 |
| $10,000,000 - $25,000,000 | $1,000,000 |
| $25,000,000 - $50,000,000 | $1,500,000 |
| $50,000,000 - $75,000,000 | $2,000,000 |
| $75,000,000 - $100,000,000 | $2,500,000 |
| $100,000,000 - >$150,000,000 | $3,000,000 |

* 1. The City Engineer shall release the maintenance guarantee at the end of the term of the guarantee only after an inspection of the work has been performed and work performed under the Contract is shown to be in proper working order.
  2. In the event a bond is used as the guarantee, the form of the bond shall be that acceptable to the OWNER. The bond shall be negotiated for, procured from and the premium paid to a qualified surety agent as listed below. The bonds may be made by any surety company which is authorized to do business in the State of Mississippi and listed on the United States Treasury Department’s list of acceptable sureties, or such bonds may be guaranteed by a personal surety as otherwise provided for in the Mississippi Code of 1972 as referenced below. The bond shall be signed or countersigned by a qualified surety agent and also bear the signature of an “attorney-in-fact” of the surety. (Reference is made to Section 31-5-51 et seq of the Mississippi Code of 1972, Annotated, and other State statutes applicable thereto).
  3. Except as otherwise provided herein, for a personal surety, no surety or surety company shall be allowed to guarantee or write bonds for construction, alteration or repair of a public building or for public work, unless that surety is listed on the United States Treasury Department’s list of acceptable sureties.
  4. When the Work is finally completed, the total cost to the OWNER will be computed. If the total cost is greater than the cost which would have resulted under the unit prices established under the Contract, the extra expense will be the responsibility of the original CONTRACTOR’S Surety. If the total cost is less than the cost which would have resulted under the unit prices established under the Contract, the savings will be paid to the original CONTRACTOR’S Surety.
  5. The final payment will not be issued until after the final as-built drawings have been submitted, reviewed for accuracy and accepted. Final as-built drawings must be provided in both digital and hard copies. Digital files shall consist of a complete .PDF of the as-built drawings as well as the CADD files (.dgn, .dwg or .dxf format; Microstation or AutoCAD, latest versions acceptable to the OWNER). One (1) full-size hard copy shall also be provided. A digital copy of the original design drawings is available upon request.
  6. As-built drawings in digital format shall have all field changes incorporated into the original Contract drawings. Hard copies of as-built drawings shall show the redlined field changes on the original Contract drawings. Redlines on hard copies shall stand out by color.

1. **RECORDS**
   1. All CONTRACTOR records with respect to any matters covered by this agreement shall be made available to OWNER, grantor agency, the Comptroller General of the United States, their designees or the Federal Government, at any time during normal business hours, as often as OWNER or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by CONTRACTOR within thirty (30) days after receipt by CONTRACTOR. Failure of CONTRACTOR to comply with the above audit requirements will constitute a violation of this Contract and may result in the withholding of future payments.
   2. CONTRACTOR shall retain all records pertinent to expenditures incurred under this Contract for a period of three (3) years after the termination of all activities funded under this agreement, or after the resolution of all Federal Audit Findings, whichever occurs later.
   3. CONTRACTOR shall retain all records pertinent to subcontracts incurred under this Contract for a period of three (3) years after the termination of all activities funded under this agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non‑expendable property acquired with funds under this Contract shall be retained for three (3) years after final disposition of such property.
2. **INSURANCE REQUIREMENTS**
   1. CONTRACTOR shall carry:
      1. Commercial general liability insurance coverage (including subcontractors) with limits not less than $1,000,000 each occurrence; $2,000,000 aggregate (aggregate applies to all work under this Contract); automobile liability - $1,000,000 combined single limit-each accident;
      2. Workers’ Compensation and Employers’ Liability with a waiver subrogation in favor of the City of Biloxi - Statutory & $100,000 each accident; $100,000 each employee; $500,000 policy limit.
   2. Each policy shall be signed or countersigned by a Mississippi Resident Agent of the insurance company.
   3. CONTRACTOR further indemnifies and saves the OWNER harmless from and against any loss, damage and liabilities occasioned by, growing out of, or resulting from any default hereunder, relating to the execution of this agreement.
   4. The CONTRACTOR shall name the City of Biloxi as an additional insured on the Certificate of Insurance furnished to the OWNER from the Insurance Company providing the required coverage. The certificate(s) shall be on the form furnished by the OWNER and will show the types and limits of coverage.
   5. The CONTRACTOR shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Mississippi, property insurance written on a builder’s risk “all-risk” policy in the amount of the Contract Price plus value of subsequent Change Orders, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained until the date of final payment. This insurance shall include coverage of the City of Biloxi, the CONTRACTOR, and Subcontractors in the Project. The form of policy for this coverage shall be Completed Value. If the CONTRACTOR fails to maintain such insurance, then the CONTRACTOR shall bear all repair costs to the project.
   6. When any portion of the work to be completed under this Contract shall be performed on the navigable waters of the United States or in adjoining waterfront areas, CONTRACTOR shall provide evidence of coverage for The United States Longshore and Harbor Workers’ Compensation Act with an insurance company rated by A.M. Best Company not less than A-X that is licensed and admitted to operate in the State of Mississippi.
   7. Providing the types of insurance coverage to be described herein does not reduce nor relieve CONTRACTOR from his responsibility for any losses not covered by insurance.
3. **TERMINATION OF CONTRACT**
   1. OWNER may terminate this Contract at any time by giving written notice to CONTRACTOR of such termination and specifying the effective date thereof. Partial terminations of the Specifications or Proposal Document may only be undertaken with the prior approval of OWNER. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by CONTRACTOR under this agreement shall, at the option of OWNER, become the property of OWNER, and CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work completed (by unit price) on such documents or materials prior to the termination. Upon termination for convenience, the payment made to CONTRACTOR will be based upon approved units completed. OWNER may also suspend or terminate this Agreement, in whole or in part, if CONTRACTOR materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and OWNER may declare CONTRACTOR ineligible for any further participation in OWNER Contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe CONTRACTOR is in noncompliance with any applicable rules or regulations, OWNER may withhold up to fifteen (15) percent of said Contract funds until such time as CONTRACTOR is found to be in compliance by OWNER, or is otherwise adjudicated to be in compliance.
   2. The Contract may be terminated for default by the OWNER for any of the following reasons:
      1. Failure to proceed with the Work when so instructed by the OWNER or to adhere to the requirements of the Contract.
      2. Failure to perform the Work with sufficient workmen, equipment and materials to assure completion within Contract Time.
      3. Performing unacceptable Work, or neglecting or refusing to remove materials or to perform anew such Work as may be rejected as unacceptable.
      4. Discontinuing the prosecution of Work.
      5. Violation of labor provisions and special regulations.
      6. Becoming insolvent, being declared bankrupt or committing any act of bankruptcy or insolvency.
      7. Allowing a final judgment to stand unsatisfied.
      8. Failure for any other cause whatsoever to carry on work in an acceptable manner.
   3. Before the Contract is terminated, the CONTRACTOR and the Surety will be notified in writing by the OWNER of the conditions which make termination of the Contract imminent. If no effective effort has been made by the CONTRACTOR or his Surety to correct the conditions of which complaint is made within fifteen (15) calendar days after notice is given, the OWNER may declare the Contract terminated and notify the CONTRACTOR and his Surety accordingly.
   4. Upon receipt of notice from the OWNER that the Contract has been terminated the CONTRACTOR shall immediately discontinue all Work under the Contract.
   5. After termination the OWNER will order the Surety to arrange for the prosecution of the Work. If the Surety does not proceed with the satisfactory prosecution of the work within twenty (20) calendar days from the date on which the Contract was terminated, the OWNER may proceed in any other lawful manner which will provide for the completion of the Work as planned. The Surety or the OWNER, at the Surety’s expense will perform or arrange for necessary maintenance between the date of termination and the date that Work is resumed.
4. **INDEMNIFICATION** 
   1. CONTRACTOR will indemnify and hold harmless OWNER, Engineer and their agents and employees from and against all claims, damages, losses, and expenses including attorneys’ fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from omission of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
   2. In any and all claims against OWNER and Engineer or any of their agents or employees by any employee of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 23.01 above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any Subcontractor under workmen’s compensation acts, disability benefit acts or other employee benefit acts.
   3. CONTRACTOR shall, at its sole cost, defend all suits brought upon by such losses, and pay all costs and expenses incidental thereto, but the OWNER, or any of Indemnified Parties, so sued shall have the right at its/their option, to participate in the defense of any such suit, without relieving CONTRACTOR of any obligations hereunder.
   4. CONTRACTOR’S obligations to indemnify under this Agreement shall survive termination or expiration of this Agreement.
5. **DEFINITIONS**

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

* 1. Agreement ‑ The written agreement between Owner and Contractor covering the Work to be performed; other Contract Documents are attached to the Agreement.
  2. Bid ‑ The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  3. Bidder ‑ Any person, firm or corporation submitting a Bid for the Work.
  4. Bonds ‑ Bid, performance and payment bonds and other Instruments of security, furnished by Contractor and his surety in accordance with the Contract Documents.
  5. Change Order ‑ A written order to Contractor signed by Owner authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after the execution of the Agreement.
  6. Contract Documents - The Agreement, Addenda (whether issued prior to the opening of Bids or the execution of the agreement), Instructions to Bidders, Contractor’s Bid, the Bonds, the Notice of Award, these General Conditions, the Supplementary Conditions, the Specifications, Drawings, Modifications, Notices to Proceed and Purchase Orders.
  7. Contract Price – The price provided for in the Contract for a specifically described unit of work.
  8. Contract Time – The period of time beginning upon execution of the Agreement between Owner and Contractor and continuing through until termination of the Agreement, including any option to extend the time.
  9. Contractor ‑ The person, firm or corporation with whom Owner has executed the Agreement.
  10. Day – A calendar day is defined as any day shown in the calendar beginning and ending at midnight.
  11. Drawings ‑ The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by the Engineer and are referred to the Contract Documents.
  12. Engineer ‑ The person, firm or corporation named as such in the Agreement or the City Engineer for Biloxi, Mississippi.
  13. Modification ‑ (a) A written amendment of the Contract Documents signed by both parties, (b) a Change Order, (c) a written clarification or interpretation issued by Engineer, or (d) a written order for a minor change or alteration in the Work issued by Engineer. A Modification may only be issued after execution of the Agreement.
  14. Notice of Award ‑ The written notice by Owner to the apparent successful Bidder stating that upon compliance with conditions precedent to be fulfilled by him within the time specified, Owner will execute and deliver the Agreement to him.
  15. Notice to Proceed ‑ A written notice given by Owner to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform his obligations under the Contract Documents on a specific segment of Work.
  16. Owner ‑ A public body or authority, corporation, association, partnership, or individual for whom the Work is to be performed.
  17. Project ‑ The entire construction to be performed as provided in the Contract Documents.
  18. Resident Project Representative - The authorized representative of Engineer who is assigned to the Project site or any part thereof.
  19. Shop Drawings ‑ All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by Contractor, a Subcontractor, manufacturer, supplier or distributor and which illustrate the equipment, material or some portion of the Work.
  20. Specifications ‑ Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work.
  21. Subcontractor ‑ An individual, firm or corporation having a direct Contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the site.
  22. Substantial Completion ‑ The date as certified by Engineer when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it was intended; or if there be no such certifications, the date when final payment is due.
  23. Warranty Period – the period of time beginning on the date of OWNER’s final payment to CONTRACTOR for this Project and extending for two (2) years from that date, during which CONTRACTOR shall guarantee all work under this Contract.
  24. Work ‑ Any and all obligations, duties and responsibilities necessary to the successful completion of the Project assigned to or undertaken by Contractor under the Contract Documents, including all labor, materials, equipment and other incidentals, and the furnishing thereof.

1. **MISCELLANEOUS**
   1. Remedies upon Default. Termination by either party of this Agreement shall not limit or otherwise effect the remedies of the non-defaulting or non-breaching party against the defaulting or breaching party. In the event that either party is in material default under any of the terms or conditions of this Agreement or has materially breached any of its representations of warranties in this Agreement, the non-defaulting or non-breaching party shall be entitled to pursue, in addition to any remedies specifically provided herein, all further remedies then available at law or in equity.
   2. Successors and Assigns. The OWNER and CONTRACTOR each bind itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns, or such party, in respect to all covenants of this Agreement. Nothing expressed or referred to in this Agreement shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto, nor shall it be construed as giving any rights, legal or equitable, benefits, remedies, or claims under or with respect to this Agreement or any provision of this Agreement, to anyone other than the OWNER and CONTRACTOR.
   3. Relationship of the Parties. CONTRACTOR’S relationship with the OWNER is that of an independent Contractor, and nothing in this Agreement is intended to, or shall be construed as creating a partnership, agency, joint venture, employment or similar relationship.
      1. CONTRACTOR acknowledges that it and all its officers, employees, and agents is/are not an employee or agent of the OWNER for any purpose whatsoever. CONTRACTOR shall be responsible for all applicable I-9 and work eligibility verification, earnings reports and tax payments to government agencies, such as the U.S. Internal Revenue Service and the Social Security Administration including payment of all wages due its employees, insurance premiums, license fees, fingerprinting costs, outfitting expenses, and all other obligations and/or expenses of CONTRACTOR relative to its employees in performance of the duties under this Agreement.
      2. CONTRACTOR acknowledges that its personnel are not entitled to receive any of the fringe benefits received by the OWNER’s employees, including but not limited to, Workers’ Compensation Insurance.
      3. CONTRACTOR shall not have the authority to enter into any Contract on the OWNER’s behalf, or to otherwise bind the OWNER to any agreement, unless expressly authorized to so do in writing.
      4. Because CONTRACTOR is an independent Contractor, the OWNER has no direction or control over Services to be performed hereunder, nor over CONTRACTOR’S personnel, and CONTRACTOR shall at all times remain the employer of its personnel performing the Services (and shall be liable for each of their actions, omissions or breaches). CONTRACTOR shall indemnify the OWNER from any claim made by any of CONTRACTOR’S personnel against the OWNER alleging rights or benefits as an employee of the OWNER.
   4. Copyrights & Patents. If this Contract results in any copyrightable or patentable material, OWNER and/or grantor agency reserves the right to royalty‑free, non‑exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work for government purposes.
   5. Non-Discrimination. All persons having a Contract with the City of Biloxi must adhere to the OWNER's policy concerning non-discrimination on the basis of race, color, religion, sex, age, sexual orientation, gender identity, national origin, veteran or disability status.
   6. Notices. All notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); or (b) received or rejected by the addressee, if sent by certified mail, return receipt requested, addressed and marked to the attention of the person (by name or title) designated below (or to such other address or person as a party may designate by notice to the other parties)

OWNER:

The City of Biloxi, Mississippi:

Attention: Mayor A. M. Gilich, Jr.

140 Lameuse Street

Biloxi, Mississippi 39530

With mandatory copies to:

City of Biloxi, Mississippi

City Attorney / Contract Manager

Post Office Box 429

Biloxi, Mississippi 39533

CONTRACTOR:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: John Doe

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. Governing Law and Jurisdiction.
     1. Governing Law. The laws of the state of Mississippi shall govern the application and interpretation of this Agreement.
     2. Jurisdiction. The courts located in Harrison County, Mississippi, Second Judicial District, shall have exclusive jurisdiction of any dispute between the parties. If one party initiates an action against the other or should a party seek any form of relief against the other, then said action shall be filed in Harrison County, Mississippi, Second Judicial District. Any business or person doing business with the OWNER submits to the personal jurisdiction of the courts in Harrison County, Mississippi.
  2. Amendments. This Agreement may not be altered or amended, nor may rights hereunder be waived, except by writing executed by both parties.
  3. Assignability. CONTRACTOR may not assign any of its rights or delegate any of its obligations under this Agreement without the prior express written consent of the OWNER. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the CONTRACTOR.
  4. No Waiver of Warranties. Notwithstanding any provisions to the contrary that may be found in this Agreement or any other supplemental terms that may be referenced therein, any provision that seeks to limit the OWNER’s recovery resulting from a breach of express or implied warranties shall be of no force or effect.
  5. No Waiver of Damages. Notwithstanding any provisions to the contrary that may be found in the Agreement, or any other supplemental terms that may be referenced therein, any provision that seeks to limit the OWNER’s recovery in any manner shall be of no force or effect.
  6. Waiver of Jury Trial. The OWNER shall not be subject to the terms of any provision or any supplemental terms that may seek to waive its right to a jury trial; and any such term(s) requiring same, shall be deemed to be of no force or effect as against the OWNER.
  7. Force Majeure. Neither party shall be liable for failure to perform or delay in performing any obligation under the Agreement if the failure or delay is caused by any circumstances beyond its reasonable control, including, but not limited to, acts of God, war, civil commotion or industrial dispute (“Force Majeure”). If such delay or failure continues for at least sixty (60) days, then either party may provide written notice to terminate the Agreement; and, upon such termination, the parties will owe no further obligations to the other except with respect to any rights or obligations that may have accrued prior to termination.
  8. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable for any reason, that provision shall be ineffective to the extent of such invalidity or unenforceability, and such invalidity or unenforceability shall not affect any other provision of this Agreement. If necessary, the parties shall negotiate in good faith to modify the Agreement to preserve (to the extent possible) their original intent.
  9. Authority. The parties represent that they have full power and authority to enter into and perform this Agreement and the parties know of no Contract, agreement, promise or undertaking which would prevent the full corporate execution and performance of this Agreement, and the persons executing this Agreement on behalf of the parties are duly authorized to do so and have the authority to bind such parties.
  10. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter (including any letter of intent, memorandum of understanding or other such non-binding document).
  11. Arbitration. The OWNER shall not be subject to the terms of any provision any supplemental terms that may seek to require the OWNER to submit a dispute to arbitration; and, any such term(s) requiring same, shall be deemed to be of no force or effect as against the OWNER.
  12. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or email transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

***Signatures on following page***

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

|  |  |
| --- | --- |
| **OWNER:**  CITY OF BILOXI, MISSISSIPPI  By:  Name: A.M. Gilich, Jr.  Title: Mayor  Address: P.O. Box 429  Biloxi, MS 39530  Phone: (228) 435-6269  Email: mayor@biloxi.ms.us | **CONTRACTOR:**  \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By:  Name:  Title:  Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| ATTESTED TO BY:    Municipal Clerk |  |