**FEDERAL FUNDING ADDENDUM TO CONSTRUCTION AGREEMENT**

**THIS, FEDERAL FUNDING ADDENDUM TO CONSTRUCTION AGREEMENT** (this “Addendum”), is entered this the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2023, by and between the CITY OF BILOXI, MISSISSIPPI, a Mississippi municipal corporation (the “City”) and LJ CONSTRUCTION, INC., a Mississippi corporation (the “Contractor”).

**WHEREAS,** the City and Contractor entered into that certain Construction Agreement (the “Agreement,” dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2023, in connection with the City’s Capital Project No. 1078: Shriners Blvd Water/Sewer Extension, Phase II (“Project 1078”);

**WHEREAS,** Project 1078 is funded, in part with a Mississippi Municipality & County Water Infrastructure Grant (“MCWI”) from the Mississippi Department of Environmental Quality (“MDEQ”);

**WHEREAS,** in order for the City to receive reimbursement from the MDEQ for the work performed by said Contractor, it is necessary that the Contractor and City ensure their contractual relationship is in compliance with all MDEQ requirements and **t**his is an acknowledgement that federal financial assistance will be used to fund all or a portion of the contract.

**NOW THEREFORE,** in consideration of the provisions set forth in the foregoing recitals, and the consideration set forth in the Agreement, all of which is incorporated herein by reference, the sufficiency and adequacy of which is hereby acknowledged, during the performance of this contract, Contractor agrees as follows:

1. **REMEDIES FOR BREACH OF CONTRACT TERMS**
2. The City 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 the City may declare Contractor ineligible for any further participation in City Contracts, in addition to other remedies as provided by law.
3. In the event there is probable cause to believe Contractor is in noncompliance with any applicable rules or regulations, the City may withhold up to fifteen percent (15%) of the contract funds until such time as Contractor is found to be in compliance by the City, or is otherwise adjudicated to be in compliance.
4. The Agreement may be terminated for cause by the City for any of the following reasons, each of which is a default event:
   1. Failure to proceed with the work when so instructed by the Engineer or to adhere to the requirements of the Agreement.
   2. Failure to perform the work with sufficient workmen, equipment and materials to assure completion within the Contract Time.
   3. Performing unacceptable work, or neglecting or refusing to remove materials or perform anew such work as may be rejected as unacceptable.
   4. Discontinuing the prosecution of the 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. Making an assignment for the benefit of creditors.
   9. Failure for any other cause whatsoever to carry on work in an acceptable manner.
5. Before the Agreement is terminated, the Contractor and Surety will be notified in writing by the City of the City’s intent to declare the Contractor in default and terminate the Agreement. If no satisfactory effort has been made by the Contractor within fifteen (15) calendar days after notice is given, the City’s Mayor may declare the Agreement terminated and notify the Contractor and Surety accordingly.
6. Upon receipt of notice from the City that the Agreement has been terminated, the Contractor shall immediately discontinue all operations.
7. After termination, the City will order the Surety to arrange for the prosecution of work within twenty (20) calendar days from the date on which the Agreement was terminated. If the Surety does not proceed with the satisfactory prosecution of the work within twenty (20) calendar days from the date on which the Agreement was terminated, the City may proceed by either re-advertising and awarding the Agreement, or proceed in any other lawful manner that will provide for the completion of the work as planned and set forth in the Agreement. The Surety or the City, at the Surety’s expense, will perform or arrange for the necessary maintenance between the date of termination and the date work is resumed. The Surety shall not tender the completion of the work to the Contractor without the express, written authorization of the City.
8. When the work is finally completed, the total cost to the City will be computed. If the total cost is greater than the cost that would have resulted at the original contract unit prices, the extra expense will be the responsibility of the original Contractor’s Surety. If the total cost is less than the cost that would have resulted at the original contract unit prices, the savings will be paid to the original Contractor’s Surety.
9. **TERMINATION FOR CONVENIENCE**

The City may terminate this Agreement at any time by giving written notice to the 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 the City. 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 the City, become the property of the City, 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.

1. **EQUAL EMPLOYMENT OPPORTUNITY**

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

1. **DAVIS BACON ACT, AS AMENDED (40 U.S.C. 3141–3148)**

Contractor agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis‑Bacon Act as amended, the provisions of Contract Work Hours, the Hatch Act, the Safety Standards Act, the Copeland "Anti‑Kickback" Act (40 U.S. C. 276, 327‑333) 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 Agreement. Contractor shall maintain documentation, which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

1. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The City of Biloxi shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

1. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

The requirements of 37 C.F.R. Part 401 are not applicable to this Agreement.

1. **CLEAN AIR ACT (42 U.S.C. 7401–7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251–1387), AS AMENDED**

Contractor agrees to comply with the following regulations insofar as they apply to the performance of this Contract (applies to Contracts or subcontracts in excess of $100,000):

1. Clean Air Act, 42 U.S.C., 1857, et seq. (Amended to 42 U.S.C., 7602, et. seq.)
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. **DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)**
5. Contractor acknowledges that a contract award (see 2 CFR 180.220) or subcontract award must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
6. This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
7. The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
8. This certification is a material representation of fact relied upon by (insert name of recipient/subrecipient/applicant). If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of Biloxi, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
9. The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.
10. Contract further warrants that it has executed Section 905-B City of Biloxi Project Non-Collusion, Debarment/Ineligible Certification under penalty of perjury.
11. **BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)**
12. Contractors who apply or bid for an award of more than $100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.
13. Contract further warrants that it has executed City of Biloxi Byrd Anti-Lobbying Certification.
14. **PROCUREMENT OF RECOVERED MATERIALS**
15. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
16. Competitively within a timeframe providing for compliance with the contract performance schedule;
17. Meeting contract performance requirements; or
18. At a reasonable price.
19. Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines webpage: https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program.
20. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.
21. **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**
22. Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause.
23. Prohibitions.
    1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
    2. Unless an exception in paragraph (3) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
       1. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
       2. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
       3. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
       4. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
24. Exceptions.
25. This clause does not prohibit contractors from providing:
    1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
    2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
26. By necessary implication and regulation, the prohibitions also do not apply to:
    * + 1. Covered telecommunications equipment or services that:

Are not used as a substantial or essential component of any system; and

Are not used as critical technology of any system.

* + - 1. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

1. Reporting requirement.
   1. In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (2)(b) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
   2. The Contractor shall report the following information pursuant to paragraph (2)(a) of this clause:
   3. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
   4. Within 10 business days of submitting the information in paragraph (2)(b)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
2. Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (3), in all subcontracts and other contractual instruments.
3. **DOMESTIC PREFERENCES FOR PROCUREMENTS**
4. As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.
5. For purposes of this clause:
6. Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
7. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
8. **FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.

1. **AFFIRMATIVE SOCIOECONOMIC STEPS**

If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.

1. **CONTROL**

To the extent that this Addendum conflicts with any other Contract document, the terms of this Addendum will control.

**IN WITNESS WHEREOF,** the parties by their duly authorized officers have caused these presents to be subscribed on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2023.

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| **CITY:**  THE CITY OF BILOXI, MISSISSIPPI, a  Mississippi municipal corporation  By:  Name: A. M. Gilich, Jr.  Title: Mayor  ATTESTED BY:  Stacy L. Thacker, Municipal Clerk | **CONTRACTOR:**  LJ CONSTRUCTION, INC., a Mississippi corporation  By: Name: Title: |