*Revised: 02/08/2022*

**SECONDARY MAINTENANCE 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 any and all work, as specified and indicated in the Contract Documents, assigned to it by the Engineer through Purchase Orders and Notices to Proceed, for the completion of the Project generally described as follows:

**2022 Repair Replace**

* 1. The Contract listed above is a maintenance project, which will consist of various project(s) requested and assigned as work is available and needed by the OWNER, each referred to as a “Task.” When work is required under the above referenced Contract, a Purchase Order for the specific Task shall be issued to the CONTRACTOR.
  2. OWNER does not guarantee a minimum or maximum amount of work under this Contract. Payment in satisfaction of the Contract is payment in accordance with the Contract Documents for each completed Task.
  3. 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.
  4. 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 Specifications.

1. **ENGINEER**
   1. 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. **TASKS**
   1. From time to time, as the need arises, the OWNER will request that CONTRACTOR perform certain Tasks in accordance with the Contract Documents. At the time OWNER requests such work, CONTRACTOR shall provide an estimate of the costs for such Task, based on the unit prices specified in the Contract Documents.
   2. Upon acceptance of such estimate, the OWNER will issue both a Notice to Proceed, specifying the work commencement and work completion dates for the Task, and a Purchase Order for the agreed upon costs of such Task.
   3. Task(s) shall be deemed either an "emergency Task" or a "standard Task," as determined by the Engineer or his authorized representative. An emergency Task shall be a Task which involves work to correct a problem which causes, or may cause, an immediate threat to public health, safety, or wellbeing; poses an immediate threat to environmental detriment; or in any way poses a threat that the OWNER may be or become in violation of any federal, state, or local law or ordinance.
   4. The Engineer shall be responsible for issuing Purchase Orders for each Task assigned under this Contract, as well as a Notice to Proceed, specifying the start and completion for each Task. CONTRACTOR may not being work on any Task until a Purchase Order and a Notice to Proceed is delivered.
   5. The CONTRACTOR shall be available to start work as soon as the OWNER issues a written order to commence work (a “Notice to Proceed”). CONTRACTOR shall be on standby and ready to respond during the entire length of the contract. Work on each emergency task shall commence within two (2) hours and work on each standard task shall commence within ten (10) days. Liquidated damages will not be charged for this work, but failure to respond to or complete work within the required time will be considered in authorizing additional work.
   6. The CONTRACTOR is responsible for verifying the information on historical drawings. The OWNER makes no representation or warranty as to the accuracy of the information depicted thereon.
   7. If the cause and solution of a problem for which a Task was issued cannot be determined at the time of issuance of the Task to the CONTRACTOR, the Engineer or his authorized representative shall determine the scope of work for the Task once the Contractor has completed an investigation of the area. Additional problems may be discovered as work progresses. The Engineer reserves the right to expand the scope of work for a particular Task in order to complete additional repairs as needed in the area, as long as the Task has not been closed-out.
   8. Written Purchase Order(s) shall be issued to the CONTRACTOR by the City Engineer. Task(s) will be issued, performed, and closed-out in accordance with "Scope of Work" of the Specifications.
   9. The minimum payment for any approved and completed Task issued by the Engineer whether it be a “standard Task” or “emergency Task” shall be One Thousand And 00/100 Dollars ($1,000.00).
   10. OWNER may rescind or cancel the Task without liability at any time prior to the date when the Task Time commences to run, and in that event the OWNER shall not be liable for any expenses, damages or losses incurred by the CONTRACTOR prior to that date, including, but not limited to any claim for lost profits or loss of benefit of the bargain.
   11. Emergency work orders shall be issued orally and reduced to writing in accordance with the “Scope of Work” of the Specifications. Verbal Tasks shall be issued to the CONTRACTOR by the Engineer or his authorized representative. Written Task(s) shall be issued to the CONTRACTOR by the Engineer. Delivery order(s) will be issued, performed, and closed-out in accordance with “Scope of Work” of the Specifications.
   12. 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 time allotted for each Task.
3. **CONTRACT TIME**
   1. The CONTRACTOR shall be available for work under this Contract on a date stated on the written "Notice to Proceed" order issued for the above-referenced project by the OWNER. The CONTRACTOR shall complete individual Task(s) on or before the Completion Date stated on the Task. The completion of a Task shall include mobilization to the site; subsurface investigation; submittal of working drawings and traffic control plan as required; repair/replacement; project site clean-up and demobilization; and submittal of as-built drawings (if required) and pay request in a manner satisfactory to the Engineer or his authorized representative.
   2. The Contract shall end January 1 , 2022 for the basic period, unless terminated prior to that date in accordance with “Article XXIII:” of this Contract.
   3. The OWNER, at its sole discretion, may exercise (5) separate option periods of up to (6) months each. If exercised by the OWNER, the option periods shall run as follows:
      1. The first (1st) option shall end on June 30, 2022;
      2. The second (2nd) option shall end on ;
      3. The third (3rd) option shall end on ;
      4. The fourth (4th) option shall end on ; and
      5. The fifth (5th) option shall end on .
   4. The option periods, if exercised, shall be governed by the same requirements stated in the Contract Documents. In accordance with the laws of the State of Mississippi, any option period, which is exercised and extends beyond the term of the current existing City Council, shall be subject to ratification or cancellation by governing authority boards taking office subsequent to the governing authority board entering the Contract.
4. **TASK TIME**
   1. The CONTRACTOR shall be available for work under this Contract on all dates stated in any Notice to Proceed issued for any Task in connection with the above-referenced project by the OWNER. The CONTRACTOR shall complete individual Task(s) on or before the Completion Date stated on the Notice to Proceed. The completion of a Task shall include mobilization to the site; submittal of working drawings and traffic control plan as required; submittal of all required information from “Testing and Submittal” section of the specification; perform inspections, cleaning operations, and rehabilitation operations as required; project site clean-up and demobilization; and submittal of as-built drawings and pay request in a manner satisfactory to the Engineer or his/her authorized representative.
5. **CONTRACT PRICE**
   1. CONTRACTOR submitted the approved bid for the performance of all work described in the Contract Documents for the various line items specified in bid, for the unit prices specified therein.
   2. 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 Contract Price for each line item shall not exceed the amount of the approved bid unless otherwise approved by the OWNER.
   3. The schedule of estimated contract items and unit prices provided in the proposal shall apply to the basic period and the first option period, if exercised by the OWNER. If requested by the Contractor, unit prices for the second and fourth option periods, if exercised, shall be adjusted by the City by applying the CPI factor to the unit prices bid for the basic period, as described herein.
6. **OPTION PERIOD CPI ADJUSTMENT**
   1. If a Contract extension option is exercised by the OWNER, upon receipt of a written request by the Contractor at the time of the second and fourth options are exercised, the unit prices shall be adjusted, once, at the beginning of the option period, by the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U), South Region for the twelve (12) month period immediately prior to the option period. The adjusted prices shall be used for all billings for the option period adjusted and the subsequent option period (totaling twelve months). The percentage change in the CPI shall be calculated as follows:

CPI for last month of previous period, ie March 2020; \_\_\_\_\_\_\_\_\_\_\_

Less CPI for the same month of prior calendar year, ie March 2019; \_\_\_\_\_\_\_\_\_\_\_

Equals index point change for previous period; \_\_\_\_\_\_\_\_\_\_\_

Divided by CPI for month prior to beginning of previous period, ie March 2019 \_\_\_\_\_\_\_\_\_\_\_

Results multiplied by 100 = percent change in CPI \_\_\_\_\_\_\_\_\_\_\_

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 3, inclusive),
      2. Exhibits to this Agreement,
      3. CONTRACTOR’S Proposal and Bonds,
      4. Notice of Award,
      5. Advertisement
      6. Testing and Submittal Requirements
      7. Notice to Bidders
      8. Special Provisions
      9. Technical Specifications, including the Mississippi Standard Specifications for Road and Bridge Construction, 2017 Edition, Excluding Division 900, if applicable,
      10. Any Addenda to the Contract Documents.
      11. Any modifications, including Change Orders, duly delivered after execution of this Agreement, and
      12. 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. **APPLICATIONS FOR PAYMENTS**
   1. CONTRACTOR shall submit pay requests in accordance with the section entitled “City of Biloxi Testing and Submittal Requirements” of the Specifications. A separate pay request shall be submitted for each **completed** Task. Application for payment shall only be made for completed and approved Tasks. Any application for payment submitted for an open Task shall be held until all work for the Task has been completed. “Completed Task” shall mean all work has been completed and approved by the Engineer or his authorized representative, all testing has been completed and reports have been received by the Engineer, all testing has passed the OWNER’s requirements, and all submittals required by the CONTRACTOR have been received by the Engineer. There shall be no payment for stored materials.
   2. OWNER shall make payments for approved and completed Task(s) on the basis of CONTRACTOR's Application for Payment as recommended by the Engineer during the course of this Contract. All payments will be on the basis of approved and completed Task(s) measured by the schedule of values listed in the Proposal Document.
3. **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.
4. **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.
5. **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 manufacturer 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.
6. **CHANGES TO WORK**
   1. Engineer may, at any time or from time to time, order additions, deletions or revisions in the Work associated with any Task; these will be authorized by modification of the Purchase Order issue for the subject Task. Upon receipt of such a Change Order, CONTRACTOR shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. Change Orders may not alter unit prices established under the Contract Documents.
   2. 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. **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.
9. **BONDS**
   1. Prior to commencement of any work under this Contract, the CONTRACTOR shall execute and deliver to the OWNER a performance bond or bonds in the amount of Two Hundred Fifty Thousand And 00/100 ($250,000.00). 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.
10. **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 will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. CONTRACTOR will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting agency setting forth the provisions of this nondiscrimination clause.
    5. 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 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.
    6. CONTRACTOR agrees to comply with the requirements 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.
    7. 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.
    8. Participants employed or trained for inherently dangerous occupations, shall be assigned to work in accordance with reasonable safety practices.
    9. 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.
11. **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.
12. **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 Contract 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 payments on the basis of CONTRACTOR'S application for payment as approved by the ENGINEER during the course of this agreement. All payments will be on the basis of the approved work completed to date measured by the schedule of values.
    4. All 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 OWNER has been required to correct defective Work, complete the Work, or maintain traffic control due to unsafe conditions;
       6. Of unsatisfactory prosecution of the Work, including failure to clean up the job site;
       7. Of persistent failure to carry out the Work in accordance with the Contract Documents; or
       8. 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.
13. **WARRANTIES**
    1. Upon written notice from the CONTRACTOR of completion of all items of work under a Task, inspection will be made by the City Engineer or his authorized representative. If all work under the Task 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 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. CONTRACTOR shall guarantee all work for individual Tasks for a period of **Error! Reference source not found.** (1) year(s) after the date of payment (the “Warranty Period”) for said Task by the OWNER.
    3. If, prior to the expiration of 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
14. **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.
15. **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. 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.
    6. 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.
16. **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 completed Work. 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. If the CONTRACTOR cannot be reached for an emergency Task or notification of sub-standard work causing an emergency situation. The OWNER will make all reasonable attempts to contact the CONTRACTOR at the emergency phone numbers provided to the OWNER by the CONTRACTOR.
       3. If the CONTRACTOR fails to respond to an emergency Task within the time specified or respond with the proper resources as described in "Scope of Work."
       4. OWNER may terminate this contract if the CONTRACTOR fails to complete any Task within the time specified on the Notice to Proceed
       5. Failure to perform the Work with sufficient workmen, equipment and materials to assure completion within Contract Time.
       6. Performing unacceptable Work, or neglecting or refusing to remove materials or to perform anew such Work as may be rejected as unacceptable.
       7. Discontinuing the prosecution of Work.
       8. Violation of labor provisions and special regulations.
       9. Becoming insolvent, being declared bankrupt or committing any act of bankruptcy or insolvency.
       10. Allowing a final judgment to stand unsatisfied.
       11. 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.
    6. If Primary Contract is terminated, Owner has discretion to use the Secondary Contract.
17. **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 24.01 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.
18. **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 Task 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. Primary Contractor – The person, firm or corporation whom Owner deems to have submitted the lowest and best bid and with whom Owner enters into the Primary Contract. Work shall be assigned first to the Primary Contractor and if the Primary Contractor cannot meet the performance schedule of any Task, the Owner may assign the task to the Secondary Contractor.
  18. Project ‑ The entire construction to be performed as provided in the Contract Documents.
  19. Resident Project Representative - The authorized representative of Engineer who is assigned to the Project site or any part thereof.
  20. Secondary Contractor - The person, firm or corporation whom Owner deems to have submitted the second lowest and best bid and with whom Owner enters into the Secondary Contract. Work shall be assigned to the Secondary Contractor in the event that the Primary Contractor is unable to meet Owner’s performance schedule.
  21. 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.
  22. 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.
  23. 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.
  24. 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.
  25. Task – any of the various projects requested and assigned as work is available and needed by the OWNER and for which a Purchase Order is issued.
  26. 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

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* 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 | **CONTRACTOR:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By:  Name:  Title: |
| ATTESTED TO BY:    Municipal Clerk |  |