*Revised 06/27/2023*

**Note to Designers:**

**This Addendum is only required when the project is funded with MDEQ MCWI (ARPA) grant funds.**

**SECTION 902A**

**ADDENDUM TO CONSTRUCTION AGREEMENT**

**THIS, 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 \_\_\_\_\_\_\_\_\_\_\_\_\_, a Mississippi limited liability company (the “Contractor”).

**WHEREAS,** the City and \_\_\_\_\_\_\_\_\_ entered into that certain Construction Agreement, dated \_\_\_\_\_\_\_\_\_\_\_, in connection with the City’s Capital Project No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Project \_\_\_\_\_\_\_\_”);

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

**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 amend their contractual relationship to ensure compliance with all MDEQ requirements.

**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, the Parties agree as follows:

1. **AUTHORITY TO PARTICIPATE IN THIS AGREEMENT**

Contractor certifies that (a) it is either a 1) state agency, 2) a validly organized business that is authorized to do business in the state of Mississippi, 3) a nongovernmental organization, or 4) a political subdivision of the state of Mississippi with valid authority to enter into this agreement and; (b) entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (c) notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

# DEBARMENT AND SUSPENSION

Contractor certifies to the best of its knowledge and belief, that it:

* 1. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
  2. has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
  3. has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  4. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in Article 2.B. and Article 2.C., above; and,
  5. has not, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

This agreement is subject to 31 C.F.R. Part 19.

# INDEMNIFICATION

To the extent allowed by state law, Contractor agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and the Department's contractors from and against any and all claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of Contractor, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

# RELATIONSHIP STATUS

Contractor acknowledges and agrees that MDEQ is not a party, in any manner whatsoever, to any contract between the City and the construction contractor(s), engineer(s), attorney(s), equipment supplier(s), contractor(s), or between any other parties of any kind whatsoever (hereinafter collectively referred to as “vendor”). The City and the Contractor also acknowledge and agree that any benefit to vendors contracting with the City or Contracted Parties arising from or associated with this Agreement is strictly incidental and all such vendors are not and are not intended to be considered as third-party beneficiaries under any agreement between MDEQ and the SUBRECIPIENT.

Upon execution of any contract between the City and any other party in regard to the project, MDEQ does not assume any authorities, duties, responsibilities, or liabilities under such contract. The City and ­­­­­the Contractor shall not have any authority to bind or otherwise obligate MDEQ, directly or indirectly, under any contract or agreement between the City and any other party. The City, the Contractor, and its vendors acknowledge and agree that any action taken by MDEQ in its role of grantor, or in its separate and distinct role as regulator shall not in any way change or alter its position as that of grantor.

MDEQ does not have any authority, duty, responsibility, or liability in contract claims or dispute identification, negotiation, resolution, or any other actions regarding contract claims under the contract(s) between the City and any other party. The City and the Contractor acknowledge and agree that MDEQ is not obligated to review, comment on, approve, or discuss the merits of any contract claims presented by or to any party. Any MDEQ reviews, approvals, observations, presence at meetings, written communications, verbal communications or other actions are not to be interpreted as addressing the merits of any claims, nor are they to be construed as interpreting the contract between the City and the Contractor or any other parties.

# ACCESS TO RECORDS

Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, then the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of the Contractor’s books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the Contractor’s personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by the Contractor for a minimum of ten (10) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

The Contractor is not required to retain the above-mentioned records for the ten (10) year period prescribed in this Section and the “Right to Audit” provision only if all of the following conditions are satisfied:

1. The Contractor has provided all of the documents described above and in the “Right to Audit” provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;
2. No audit, litigation or other action arising out of or related in any way to this Project is commenced before the Contractor provides the records and corresponding certification to MDEQ, in which case, Contractor shall retain the records until all issues arising out of the action are finally resolved; and
3. Contractor provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

# RECORD RETENTION AND RIGHT TO AUDIT

Contractor shall maintain and retain books, documents, papers, financial records and other records, including electronic records, as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of ten (10) years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten (10) year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor’s Office, its designees, or other authorized bodies, including the Office of Inspector General. If any litigation, claim, investigation, or audit relating to this Agreement or an activity funded under the Agreement is started before the expiration of the ten (10) year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

# RIGHT TO INSPECT WORK; SITE ACCESS

MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Upon request by MDEQ, the Contractor shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to the performance of the Work.

# CONFLICT OF INTEREST

Contractor covenants that it presently has no interest and shall not acquire any interest direct or indirect in the Project that is the subject to this Agreement or any parcels therein, where applicable, or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that, in the performance of this agreement, no person having any such interest shall be employed.

Contractor agrees to establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have a family, business, or other tie.

# COOPERATION AND EVALUATION

Contractor agrees to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project(s) to which the Agreement relates, and to provide in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, Contractor agrees to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.

***Signatures on following page***

**IN WITNESS WHEREOF,** the parties by their duly authorized officers have caused these presents to be subscribed on the day and year first above written.

|  |  |
| --- | --- |
| **CITY:**  THE CITY OF BILOXI, MISSISSIPPI, a  Mississippi municipal corporation  By:  Name: Andrew M. Gilich, Jr.  Title: Mayor  ATTESTED BY:  Stacy L. Thacker, Municipal Clerk | **GULF COAST:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Mississippi limited liability company  By: Name: Title: |