

**AGENDA**  
**CITY OF GAUTIER, MISSISSIPPI**  
**CITY HALL COUNCIL CHAMBERS**  
**December 3, 2019 @ 6:30 PM**

**I. Call to Order**

- 1. Prayer**
- 2. Pledge of Allegiance**

**II. Agenda Order Approval**

**III. Announcements**

- 1. Gautier Gator Chorale will be spreading Holiday Cheer on Wednesday, December 11th at City Hall @ 10:00 a.m.**
- 2. City of Gautier's Lights and Lagniappe on the Bayou - Saturday, December 7th at 3:00 PM at Gautier City Hall**
- 3. 22nd Annual City of Gautier Rotary Christmas Parade - Saturday, December 7th at 1:00 p.m.**
- 4. Offices closed Tuesday, December 24th and Wednesday, December 25th in observance of Christmas Day**

**IV. Presentation Agenda**

- 1. Recognition of the 2019 Jackson County Youth Football League Super Bowl Champions**

**V. Business Agenda**

1. Authorization to award and execute the Contract for Shepard State Park Log Cabin, Phase III

|                          |                       |                          |                                                        |                          |                                           |                          |      |
|--------------------------|-----------------------|--------------------------|--------------------------------------------------------|--------------------------|-------------------------------------------|--------------------------|------|
| <input type="checkbox"/> | STAFF<br>PRESENTATION | <input type="checkbox"/> | PUBLIC<br>QUESTIONS/COMMENTS<br>(3 MINUTES PER PERSON) | <input type="checkbox"/> | MOTION<br>COUNCIL<br>DISCUSSION/QUESTIONS | <input type="checkbox"/> | VOTE |
|--------------------------|-----------------------|--------------------------|--------------------------------------------------------|--------------------------|-------------------------------------------|--------------------------|------|

2. Approval of a General Services Agreement with Seymour Engineering

|                          |                       |                          |                                                        |                          |                                           |                          |      |
|--------------------------|-----------------------|--------------------------|--------------------------------------------------------|--------------------------|-------------------------------------------|--------------------------|------|
| <input type="checkbox"/> | STAFF<br>PRESENTATION | <input type="checkbox"/> | PUBLIC<br>QUESTIONS/COMMENTS<br>(3 MINUTES PER PERSON) | <input type="checkbox"/> | MOTION<br>COUNCIL<br>DISCUSSION/QUESTIONS | <input type="checkbox"/> | VOTE |
|--------------------------|-----------------------|--------------------------|--------------------------------------------------------|--------------------------|-------------------------------------------|--------------------------|------|

3. Authorization to approve Change Order No. 2 for the City Park Fitness Trail

|                          |                       |                          |                                                        |                          |                                           |                          |      |
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| <input type="checkbox"/> | STAFF<br>PRESENTATION | <input type="checkbox"/> | PUBLIC<br>QUESTIONS/COMMENTS<br>(3 MINUTES PER PERSON) | <input type="checkbox"/> | MOTION<br>COUNCIL<br>DISCUSSION/QUESTIONS | <input type="checkbox"/> | VOTE |
|--------------------------|-----------------------|--------------------------|--------------------------------------------------------|--------------------------|-------------------------------------------|--------------------------|------|

4. Authorization to Acknowledge Bids and Award Contract for Video Inspection and Flow Monitoring Services for the Old Spanish Trail/Gautier Vancleave Road Sewer Improvements Project

|                          |                       |                          |                                                        |                          |                                           |                          |      |
|--------------------------|-----------------------|--------------------------|--------------------------------------------------------|--------------------------|-------------------------------------------|--------------------------|------|
| <input type="checkbox"/> | STAFF<br>PRESENTATION | <input type="checkbox"/> | PUBLIC<br>QUESTIONS/COMMENTS<br>(3 MINUTES PER PERSON) | <input type="checkbox"/> | MOTION<br>COUNCIL<br>DISCUSSION/QUESTIONS | <input type="checkbox"/> | VOTE |
|--------------------------|-----------------------|--------------------------|--------------------------------------------------------|--------------------------|-------------------------------------------|--------------------------|------|

5. Resolution authorizing and directing the issuance of Combined Utility System Revenue Bonds, Series 2019 not to exceed \$6,000,000

|                          |                       |                          |                                                        |                          |                                           |                          |      |
|--------------------------|-----------------------|--------------------------|--------------------------------------------------------|--------------------------|-------------------------------------------|--------------------------|------|
| <input type="checkbox"/> | STAFF<br>PRESENTATION | <input type="checkbox"/> | PUBLIC<br>QUESTIONS/COMMENTS<br>(3 MINUTES PER PERSON) | <input type="checkbox"/> | MOTION<br>COUNCIL<br>DISCUSSION/QUESTIONS | <input type="checkbox"/> | VOTE |
|--------------------------|-----------------------|--------------------------|--------------------------------------------------------|--------------------------|-------------------------------------------|--------------------------|------|

6. Authorization for the Emergency Repair of the Beasely Well

|                          |                       |                          |                                                        |                          |                                           |                          |      |
|--------------------------|-----------------------|--------------------------|--------------------------------------------------------|--------------------------|-------------------------------------------|--------------------------|------|
| <input type="checkbox"/> | STAFF<br>PRESENTATION | <input type="checkbox"/> | PUBLIC<br>QUESTIONS/COMMENTS<br>(3 MINUTES PER PERSON) | <input type="checkbox"/> | MOTION<br>COUNCIL<br>DISCUSSION/QUESTIONS | <input type="checkbox"/> | VOTE |
|--------------------------|-----------------------|--------------------------|--------------------------------------------------------|--------------------------|-------------------------------------------|--------------------------|------|

7. Approval of Docket of Claims

|                          |                       |                          |                                                        |                          |                                           |                          |      |
|--------------------------|-----------------------|--------------------------|--------------------------------------------------------|--------------------------|-------------------------------------------|--------------------------|------|
| <input type="checkbox"/> | STAFF<br>PRESENTATION | <input type="checkbox"/> | PUBLIC<br>QUESTIONS/COMMENTS<br>(3 MINUTES PER PERSON) | <input type="checkbox"/> | MOTION<br>COUNCIL<br>DISCUSSION/QUESTIONS | <input type="checkbox"/> | VOTE |
|--------------------------|-----------------------|--------------------------|--------------------------------------------------------|--------------------------|-------------------------------------------|--------------------------|------|

VI. Consent Agenda (All items approved in one motion)

1. Authorization to remove two (2) firearms from Police Department Inventory for proper disposal

2. Authorization to remove three (3) sets of rear window prisoner transport bars from Police Department's inventory and declare surplus

3. Approval of the Gautier Historic Preservation Commission Re-appointments



- 4. Receive September 2019 Finance Report**
- 5. Authorization to remove vehicles from inventory, declare surplus and properly dispose**
- 6. Approval of the in-kind service request for the 2019 Gautier Rotary Club Christmas Parade**
- 7. Approval of Minutes from Recessed Council Meeting held November 19, 2019**
- 8. Approval for road closure and traffic control for the 22nd Annual Gautier Rotary Christmas Parade**

## **VII. STUDY AGENDA**

- 1. Discuss City Attorney Comments**
- 2. Discuss City Clerk Comments**
- 3. Discuss City Manager Comments**
- 4. Discuss Council Comments**
- 5. Discuss Citizen Comments**

**Recess until December 17, 2019 at 6:30 pm**  
**[www.gautier-ms.gov](http://www.gautier-ms.gov)**

**CITY OF GAUTIER, MISSISSIPPI  
ANNOUNCEMENT AGENDA  
December 3, 2019**

**ITEM DESCRIPTION:**

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**ANNOUNCEMENTS**

1.      **Gautier Gator Chorale will be spreading Holiday Cheer on Wednesday, December 11<sup>th</sup> at City Hall @ 10:00 a.m.**
2.      **City of Gautier's Lights and Lagniappe on the Bayou – Saturday, December 7<sup>th</sup> at 3:00 p.m. at Gautier City Hall**
3.      **22<sup>nd</sup> Annual City of Gautier Rotary Christmas Parade – Saturday, December 7<sup>th</sup> at 1:00 p.m.**
4.      **Offices closed Tuesday, December 24<sup>th</sup> and Wednesday, December 25<sup>th</sup> in observance of Christmas Day**

**NOTES:**

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# Join the City of Gautier for Lights & Lagniappe on the Bayou

Saturday, December 7th  
3:00 p.m.

Gautier City Hall

Tree Lighting. Pictures with Santa. Fun.  
Fireworks. Winter Wonderland  
Snow Party . Christmas Festivities



STATE OF MISSISSIPPI

*Office of the Governor*



**PROCLAMATION**

**WHEREAS**, pursuant to Miss. Code Ann. Section 3-3-7, Thanksgiving Day, Christmas Day and New Year's Day are declared legal holidays in the State of Mississippi; and

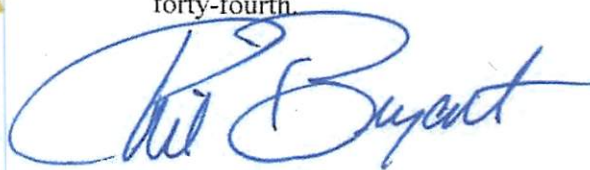
**WHEREAS**, during the Thanksgiving holiday and Christmas and New Year's season, many state employees will spend time with their families in Mississippi and in other states;

**NOW, THEREFORE**, I, Phil Bryant, Governor of the State of Mississippi, pursuant to the authority vested in me under the Constitution of the State of Mississippi and applicable statutes of the State of Mississippi, do hereby authorize the closing of all offices of the State of Mississippi on Thursday, November 28, 2019, in observance of THANKSGIVING DAY; on Wednesday, December 25, 2019, in observance of CHRISTMAS DAY; and on Wednesday, January 1, 2020, in observance of NEW YEAR'S DAY.

**IN ADDITION**, I hereby authorize the executive officers of all state agencies, in their discretion after considering the interests of the people of the State of Mississippi and the staffing needs of their respective agencies, to close all offices of the State of Mississippi on Friday, November 29, 2019, in further observance of the Thanksgiving holiday and on Tuesday, December 24, 2019, in further observance of Christmas; and to staff their respective agencies as needed during the Thanksgiving holiday and Christmas season.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Great Seal of the State of Mississippi to be affixed.

**DONE** in the City of Jackson, on the 8<sup>th</sup> day of October in the year of our Lord, two thousand and nineteen, and of the Independence of the United States of America, the two hundred and forty-fourth.

A handwritten signature in blue ink, reading "Phil Bryant".

**PHIL BRYANT  
GOVERNOR**

**BY THE GOVERNOR**

**CITY OF GAUTIER, MISSISSIPPI  
PRESENTATION AGENDA  
December 3, 2019**

**ITEM DESCRIPTION:**

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**PRESENTATION AGENDA**

1. Recognition of the 2019 Jackson County Youth Football League Super Bowl Champions

**NOTES:**

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**CITY OF GAUTIER  
Business Agenda Item #1  
Fact Sheet**

**Council Meeting:**

**December 3, 2019**

**Title:**

**Authorization to accept bids and award a contract for the Shepard State Park Log Cabin, Phase III**

**Introduced by:**

**Contact Person/Telephone**

**April Stennett 497-8000 ext. 315**

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**Summary Explanation: Authorization to accept bids and award a contract to the low bidder, David Rush Construction, LLC, for Shepard State Park Log Cabin, Phase III, in an amount not to exceed \$495,000.00**

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input type="checkbox"/>            |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract/Agreement</b>      | <input checked="" type="checkbox"/> |
| <b>Minutes</b>                 | <input type="checkbox"/>            |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input checked="" type="checkbox"/> |
| <b>Other</b>                   | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**

**Approval**

**Motion Made by:**

Torjusen ☐ Martin ☐ George ☐ Jackson ☐ Vaughan ☐ Anderson ☐ Colledge ☐

**Second Made by:**

Torjusen ☐ Martin ☐ George ☐ Jackson ☐ Vaughan ☐ Anderson ☐ Colledge ☐

| <b>Voted as follows:</b> |                 | <b>Ayes</b>              | <b>Nays</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | <b>Torjusen</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | <b>Martin</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | <b>George</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | <b>Jackson</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | <b>Vaughan</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | <b>Anderson</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | <b>Colledge</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 000-2019**

**WHEREAS**, the City of Gautier has requested bids for the Shepard State Park Log Cabin, Phase III project; and

**WHEREAS**, sealed bids for this project were received and were opened on October 29, 2019; and

**WHEREAS**, the low bidder was David Rush Construction, LLC, with a bid of \$495,000.00; and

**WHEREAS**, Goodwyn, Mills & Cawood is providing engineering services, bidding, and construction administration for this project; and

**WHEREAS**, Goodwyn, Mills & Cawood has tabulated the bid results and recommends awarding this contract to David Rush Construction, LLC, as the lowest and best bid; and

**WHEREAS**, the Mayor and Members of Council find that it is in the best interests of the City to adopt the recommendation of Goodwyn, Mills & Cawood to award the contract to David Rush Construction, LLC; and

**WHEREAS**, the Mayor and Council Members hereby find that David Rush Construction, LLC, has submitted the lowest and best bid for the this project; and

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the award and execution of a contract with David Rush Construction, LLC, for the Shepard State Park Log Cabin, Phase III project is hereby authorized and approved.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary for this purpose.

Motion was made by **BLANK** seconded by **BLANK** and the following vote was recorded:

**AYES:**

**NAYS:**

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**MAYOR**

**ATTEST:**

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**CITY CLERK**

**BLANK** by Mayor and Members of the Council of the City of Gautier, Mississippi,  
at the meeting of December 3, 2019.



**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** April Stennett, Grants Administrator  
**Date:** 11/22/2019  
**Subject:** Shepard State Park Log Cabin, Phase III, Contract Execution

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**REQUEST:**

The Grants and Projects Department requests City Council authorization to acknowledge receipt of two bids for the Shepard State Park Log Cabin, Phase III, project and award and execute a contract with the low bidder, David Rush Construction, LLC, in an amount not to exceed \$495,000.

**BACKGROUND:**

A two-story historic log cabin known as the "Wilson House" was donated to the city by Mr. Brian Britt. The building was originally constructed in the early 1920's alongside US Highway 49 in Gulfport, Mississippi. The structure was built by Walter Alfred Cox and became the homestead of Clark Wilson and his wife, Marjorie Welch Wilson. The 3,000-square-foot cabin is made of southern yellow pine logs, and has been relocated from the northeast corner of Dobson Road and Allen Road to the entrance of Shepard State Park.

Phase I of the Shepard State Park Historic Log Cabin Welcome Center included disassembly, transportation, and reassembly of the log cabin at the entrance of Shepard State Park, a new foundation for the structure, a new parking lot, sidewalks, RV dump station, etc.

Phase II's scope of work included front and back stairs, landings, guards, handrails, concrete ADA ramp, back wall construction and repairs, roof repairs, sealant, exterior doors, window glass replacements, etc.

Phase III will include the completion of the exterior repairs and all interior renovations, to include electrical, mechanical and plumbing.

**DISCUSSION:**

On October 29, 2019, sealed proposals for Shepard Park Welcome Center Phase III were received from two qualified general contractors. The bidders were David Rush Construction, LLC and Phoenix Construction, LLC. The low bidder was David Rush Construction, LLC, with a bid of \$495,000.

Goodwyn, Mills & Cawood, Inc. reviewed the bids and recommends awarding the contract to David Rush Construction, LLC.

This phase of the project is being funded through Tidelands and the general obligation bond.

**RECOMMENDATION:**

The Grants and Projects Department recommends that City Council acknowledge receipt of two bids for the Shepard State Park Log Cabin, Phase III, project and award and execute a contract with the low bidder, David Rush Construction, LLC, in an amount not to exceed \$495,000.

The City Council may:

- 1) Authorize the Award and Execution of the Contract; or
- 2) Reject all bids and modify the scope of the project; or
- 3) Reject all bids and re-advertise.

**ATTACHMENTS:**



# AIA® Document A101™ – 2017

## **Standard Form of Agreement Between Owner and Contractor** where the basis of payment is a Stipulated Sum

**AGREEMENT** made as of the    day of    in the year  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

City of Gautier, Mississippi  
3330 Highway 90  
Gautier, MS 39553

and the Contractor:  
(Name, legal status, address and other information)

David Rush Construction, LLC  
18391 Runnymede Rd  
Pass Christian, MS 39571

for the following Project:  
(Name, location and detailed description)

Shepard Park Welcome Center Phase III  
Gautier, MS

The Architect:  
(Name, legal status, address and other information)

GMC, PLLC  
11 North Water Street, Suite 15250  
Mobile, AL 36602

The Owner and Contractor agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101™–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

|   |                                                 |
|---|-------------------------------------------------|
| 1 | THE CONTRACT DOCUMENTS                          |
| 2 | THE WORK OF THIS CONTRACT                       |
| 3 | DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION |
| 4 | CONTRACT SUM                                    |
| 5 | PAYMENTS                                        |
| 6 | DISPUTE RESOLUTION                              |
| 7 | TERMINATION OR SUSPENSION                       |
| 8 | MISCELLANEOUS PROVISIONS                        |
| 9 | ENUMERATION OF CONTRACT DOCUMENTS               |

## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

- ☐ The date of this Agreement.
- ☒ A date set forth in a notice to proceed issued by the Owner.
- ☐ Established as follows:  
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

#### § 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

☒ Not later than One Hundred Eighty ( 180 ) calendar days from the date of commencement of the Work.

☐ By the following date:

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

| Portion of Work | Substantial Completion Date |
|-----------------|-----------------------------|
| N/A             | N/A                         |

**§ 3.3.3** If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Four Hundred Ninety-Five Thousand Dollars and Zero Cents (\$ 495,000.00 ), subject to additions and deductions as provided in the Contract Documents.

#### **§ 4.2 Alternates**

**§ 4.2.1** Alternates, if any, included in the Contract Sum:

| Item | Price |
|------|-------|
| N/A  | N/A   |

**§ 4.2.2** Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.  
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

| Item | Price | Conditions for Acceptance |
|------|-------|---------------------------|
| N/A  | N/A   | N/A                       |

**§ 4.3** Allowances, if any, included in the Contract Sum:  
(Identify each allowance.)

| Item                   | Price                                   |
|------------------------|-----------------------------------------|
| Allowance No. 1        | 30,500.00 included in the Contract Sum. |
| Allowance No. 2        | 7,500.00 included in the Contract Sum.  |
| Allowance No. 3        | 5,000.00 included in the Contract Sum.  |
| OH&P on All Allowances | 4,300.00 included in the Contract Sum.  |

**§ 4.4** Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

| Item | Units and Limitations | Price per Unit (\$0.00) |
|------|-----------------------|-------------------------|
| N/A  | N/A                   | N/A                     |

**§ 4.5** Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

The General Contractor and Owner recognize that time is of the essence of this agreement and that the Owner will suffer financial loss if the work is not completed within the times specified in the Bid Form, Section 00 31 00 - 4 of 6, Length of Construction, and Article 3 of this Contract, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Facility is not completed on time. Accordingly, instead of requiring any such proof, Owner and General Contractor agree to liquidated damages for delay (but not as penalty). The General Contractor shall pay One Hundred Dollars and No Cents (\$100.00) per day for

Init.

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User Notes:

(809070905)

each day that expires after the date specified for Substantial Completion until the Facility is substantially complete. After Substantial Completion is attained, if the General Contractor shall neglect, refuse or fail to complete the remaining Work within the Contract Time, included any extension granted thereof by the Owner, the General Contractor shall pay the Owner One Hundred Dollars and No Cents (\$100.00) for each day that expires after the time specified in the Bid Form, Section 00 31 00 - 4 of 6, Length of Construction, and Article 3 of this Contract for completion and readiness for final payment until the Facility and all Work is completed and ready for Final Payment.

**§ 4.6 Other:**

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

**ARTICLE 5 PAYMENTS**

**§ 5.1 Progress Payments**

**§ 5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

**§ 5.1.3** Payments are due and payable in accordance with Mississippi law, and shall be paid following approval on the next claims docket following receipt of a properly submitted invoice.

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.1** The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

## § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five (5 %)

§ 5.1.7.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

N/A

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

On any contract as described herein, of which the total amount is Two Hundred Fifty Thousand Dollars (\$250,000.00) or greater, or on any contract with a subcontractor, regardless of amount, five percent (5%) shall be retained until the work is at least fifty percent (50%) complete, on schedule and satisfactory in the architect's opinion, at which time fifty percent (50%) of the retainage held to date shall be returned to the prime contractor for distribution to the appropriate subcontractors and suppliers. Provided, however, that future retainage shall be withheld at the rate of two and one-half percent (2 1/2%)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

Payments are due and payable in accordance with Mississippi law, and shall be paid following approval on the next claims docket following receipt of a properly submitted invoice.

*(Paragraphs deleted)*

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.  
*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

### § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:  
*(Check the appropriate box.)*

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- ☒ Litigation in a court of the State of Mississippi
- ☐ Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

*(Paragraphs deleted)*

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

*(Name, address, email address, and other information)*

April Stennett  
Grants and Projects Director  
City of Gautier  
3330 Highway 90  
Gautier, Mississippi 39553  
Telephone Number: 228-497-1878

§ 8.3 The Contractor's representative:

*(Name, address, email address, and other information)*

David Rush  
Managing Member

Init.

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User Notes:

(809070905)



David Rush Construction, LLC18391 Runnymede Road  
Pass Christian, Mississippi 39571  
Telephone Number: 228-255-1286

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

#### § 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

§ 8.7 Other provisions:

### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

- .5 Drawings

| Number        | Title | Date |
|---------------|-------|------|
| See Exhibit B |       |      |

- .6 Specifications

| Section       | Title | Date | Pages |
|---------------|-------|------|-------|
| See Exhibit B |       |      |       |

- .7 Addenda, if any:

| Number         | Date                     | Pages |
|----------------|--------------------------|-------|
| Addendum No. 1 | Friday, October 18, 2019 | 21    |
| Addendum No. 2 | Monday, October 21, 2019 | 2     |
| Addendum No. 3 | Friday, October 25, 2019 | 15    |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract

Init.

Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8 Other Exhibits:**  
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ The Sustainability Plan:

| Title | Date | Pages |
|-------|------|-------|
|-------|------|-------|

☒ Supplementary and other Conditions of the Contract:

| Document         | Title                           | Date               | Pages |
|------------------|---------------------------------|--------------------|-------|
| Federal Grantees | Supplemental General Conditions | September 11, 2018 |       |
| E-Verify         | Immigration Status Verification | September 11, 2018 |       |

**.9 Other documents, if any, listed below:**  
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** (Signature)

Paula Yancey, City Manager  
(Printed name and title)

\_\_\_\_\_  
**CONTRACTOR** (Signature)

David Rush, Managing Member  
(Printed name and title)

# Additions and Deletions Report for AIA® Document A101™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:52:48 ET on 11/26/2019.

## PAGE 1

City of Gautier, Mississippi  
3330 Highway 90  
Gautier, MS 39553

...

David Rush Construction, LLC  
18391 Runnymede Rd  
Pass Christian, MS 39571

...

Shepard Park Welcome Center Phase III  
Gautier, MS

...

GMC, PLLC  
11 North Water Street, Suite 15250  
Mobile, AL 36602

## PAGE 2

☒ A date set forth in a notice to proceed issued by the Owner.

## PAGE 3

☒ Not later than One Hundred Eighty ( 180.) calendar days from the date of commencement of the Work.

...

N/A

N/A

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Four Hundred Ninety-Five Thousand Dollars and Zero Cents (\$ 495,000.00 ), subject to additions and deductions as provided in the Contract Documents.

...

N/A

N/A

...

N/A

N/A

N/A

...

Allowance No. 1  
Allowance No. 2  
Allowance No. 3  
OH&P on All Allowances

30,500.00 included in the Contract Sum.  
7,500.00 included in the Contract Sum.  
5,000.00 included in the Contract Sum.  
4,300.00 included in the Contract Sum.

...

N/A

N/A

N/A

...

The General Contractor and Owner recognize that time is of the essence of this agreement and that the Owner will suffer financial loss if the work is not completed within the times specified in the Bid Form, Section 00 31 00 - 4 of 6, Length of Construction, and Article 3 of this Contract, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by the Owner if the Facility is not completed on time. Accordingly, instead of requiring any such proof, Owner and General Contractor agree to liquidated damages for delay (but not as penalty). The General Contractor shall pay One Hundred Dollars and No Cents (\$100.00) per day for each day that expires after the date specified for Substantial Completion until the Facility is substantially complete. After Substantial Completion is attained, if the General Contractor shall neglect, refuse or fail to complete the remaining Work within the Contract Time, included any extension granted thereof by the Owner, the General Contractor shall pay the Owner One Hundred Dollars and No Cents (\$100.00) for each day that expires after the time specified in the Bid Form, Section 00 31 00 - 4 of 6, Length of Construction, and Article 3 of this Contract for completion and readiness for final payment until the Facility and all Work is completed and ready for Final Payment.

#### PAGE 4

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the — day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the — day of the — month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than — ( — ) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.) Payments are due and payable in accordance with Mississippi law, and shall be paid following approval on the next claims docket following receipt of a properly submitted invoice.

#### PAGE 5

Five (5 %)

...

N/A

...

On any contract as described herein, of which the total amount is Two Hundred Fifty Thousand Dollars (\$250,000.00) or greater, or an any contract with a subcontractor, regardless of amount, five percent (5%) shall be retained until the work is at least fifty percent (50%) complete, on schedule and satisfactory in the architect's opinion, at which time fifty percent (50%) of the retainage held to date shall be returned to the prime contractor for distribution to the appropriate subcontractors and suppliers. Provided, however, that future retainage shall be withheld at the rate of two and one-half percent (2 1/2%)

...

Payments are due and payable in accordance with Mississippi law, and shall be paid following approval on the next claims docket following receipt of a properly submitted invoice.

### § 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.  
(Insert rate of interest agreed upon, if any.)

—%

## PAGE 6

☒ Litigation in a court of competent jurisdiction of the State of Mississippi

...

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

...

April Stennett  
Grants and Projects Director  
City of Gautier  
3330 Highway 90  
Gautier, Mississippi 39553  
Telephone Number: 228-497-1878

...

David Rush  
Managing Member  
David Rush Construction, LLC 18391 Runnymede Road  
Pass Christian, Mississippi 39571  
Telephone Number: 228-255-1286

## PAGE 7

See Exhibit B

...

See Exhibit B

...

Addendum No. 1  
Addendum No. 2  
Addendum No. 3

Friday, October 18, 2019 21  
Monday, October 21, 2019 2  
Friday, October 25, 2019 15

## PAGE 8

[ **X** ] Supplementary and other Conditions of the Contract:

Federal Grantees

E-Verify

Supplemental General

Conditions

Immigration Status

Verification

September 11,

2018

September 11,

2018

Paula Yancey, City Manager

David Rush, Managing Member

## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, James R. Walker, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:52:48 ET on 11/26/2019 under Order No. 1831144354 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*



# AIA® Document A101™ – 2017 Exhibit A

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the    day of    in the year  
(In words, indicate day, month and year.)

for the following **PROJECT**:  
(Name and location or address)

Shepard Park Welcome Center Phase III  
Gautier, MS

**THE OWNER:**  
(Name, legal status and address)

City of Gautier, Mississippi  
3330 Highway 90  
Gautier, MS 39553

**THE CONTRACTOR:**  
(Name, legal status and address)

David Rush Construction, LLC  
18391 Runnymede Rd  
Pass Christian, MS 39571

### TABLE OF ARTICLES

- A.1      GENERAL**
- A.2      OWNER'S INSURANCE**
- A.3      CONTRACTOR'S INSURANCE AND BONDS**
- A.4      SPECIAL TERMS AND CONDITIONS**

#### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

#### ARTICLE A.2 OWNER'S INSURANCE

##### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

##### § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.



### § A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 **Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|----------------|-----------|
|----------------|-----------|

§ A.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|----------|-----------|
|----------|-----------|

*(Paragraph deleted)*

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

### § A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

### § A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- ☐ **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- ☐ **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- ☐ **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- ☐ **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- ☐ **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- ☐ **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- ☐ **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

#### **§ A.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

- ☐ **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach,

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including costs of investigating a potential or actual breach of confidential or private information.  
(Indicate applicable limits of coverage or other conditions in the fill point below.)

[ ] **§ A.2.5.2 Other Insurance**

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

**Coverage**

**Limits**

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each occurrence, Two Million Dollars and Zero Cents-- (\$ 2,000,000.00 ) general aggregate, and Two Million Dollars and Zero Cents (\$ 2,000,000.00 ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and

.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than (\$ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ A.3.2.5** Workers' Compensation at statutory limits.

**§ A.3.2.6** Employers' Liability with policy limits not less than One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each accident, One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each employee, and One Million Dollars and Zero Cents (\$ 1,000,000.00 ) policy limit.

**§ A.3.2.7** Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

**§ A.3.2.8** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

**§ A.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

**§ A.3.2.10** Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

**§ A.3.2.11** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

☐ **§ A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

☐ **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for Work within fifty (50) feet of railroad property.

☐ **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

☐ **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

☐ **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

☒ **§ A.3.3.2.6 Other Insurance**  
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

**Coverage**

Builder's Risk Insurance

**Limits**

\$495,000.00

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

*(Specify type and penal sum of bonds.)*

| Type             | Penal Sum (\$0.00) |
|------------------|--------------------|
| Payment Bond     | \$495,000.00       |
| Performance Bond | \$495,000.00       |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:



# Additions and Deletions Report for AIA® Document A101™ – 2017 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:54:08 ET on 11/26/2019.

## PAGE 1

Shepard Park Welcome Center Phase III  
Gautier, MS

...

City of Gautier, Mississippi  
3330 Highway 90  
Gautier, MS 39553

...

David Rush Construction, LLC  
18391 Runnymede Rd  
Pass Christian, MS 39571

## PAGE 2

~~§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.~~

## PAGE 4

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each occurrence, Two Million Dollars and Zero Cents-- (\$ 2,000,000.00 ) general aggregate, and Two Million Dollars and Zero Cents (\$ 2,000,000.00 ) aggregate for products-completed operations hazard, providing coverage for claims including

## PAGE 5

§ A.3.2.6 Employers' Liability with policy limits not less than One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each accident, One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each employee, and One Million Dollars and Zero Cents (\$ 1,000,000.00 ) policy limit.

## PAGE 6

☒ § A.3.3.2.6 Other Insurance

## PAGE 7

Builder's Risk Insurance

\$495,000.00

...

Payment Bond  
Performance Bond

\$495,000.00

\$495,000.00







October 30, 2019

Ms. April Stennett  
Grants and Projects Director  
City of Gautier  
3330 Highway 90  
Gautier, MS 39553

RE: Shepard Park Welcome Center Phase III  
for the City of Gautier  
GMC PROJECT NO.: AMOB190011

Dear Ms. Stennett:

On October 29, 2019 at 2:00 p.m. sealed proposals for Shepard Park Welcome Center Phase III were received by the City of Gautier from two qualified General Contractors at which time they were publicly opened and read. David Rush Construction, LLC is the apparent lowest responsive bidder.

After careful evaluation and review of the Contract Documents, it is our recommendation that the contract for construction be awarded to the low bidder, David Rush Construction, LLC in the amount of \$495,000.00.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

GOODWYN, MILLS & CAWOOD, INC.

A handwritten signature in blue ink, appearing to read "Chris Lunsford", written over the company name.

Chris Lunsford, AIA

/djh



TABULATION OF BIDS  
for SHEPARD PARK WELCOME  
CENTER PHASE III

October 30, 2019  
AMOB190006

Total Base Bid:

|                                                                                        |                                                                               |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| <b>David Rush Construction, LLC</b><br>1831 Runnymede Road<br>Pass Christian, MS 39571 | <b>Phoenix Construction, LLC</b><br>2190 Popps Ferry Road<br>Biloxi, MS 39532 |
| GC LICENSE NO.: 14565-MC                                                               | GC LICENSE NO.: 19024-MC                                                      |
| NOTATIONS:                                                                             | NOTATIONS: -\$30,000.00                                                       |
| <u>ITEMS RECEIVED</u>                                                                  | <u>ITEMS RECEIVED</u>                                                         |
| <input checked="" type="checkbox"/> PROPOSAL FORM                                      | <input checked="" type="checkbox"/> PROPOSAL FORM                             |
| <input checked="" type="checkbox"/> BID BOND Old Republic                              | <input checked="" type="checkbox"/> BID BOND Granite Re, Inc.                 |
| <input checked="" type="checkbox"/> NON COLLUSION AFFIDAVIT                            | <input checked="" type="checkbox"/> NON COLLUSION AFFIDAVIT                   |
| <input checked="" type="checkbox"/> STATEMENT OF DEBARMENT                             | <input checked="" type="checkbox"/> STATEMENT OF DEBARMENT                    |
| <input checked="" type="checkbox"/> LIST OF PRIMARY SUB-CONTRACTORS                    | <input checked="" type="checkbox"/> LIST OF PRIMARY SUB-CONTRACTORS           |
| <input checked="" type="checkbox"/> ADDENDUM 1                                         | <input checked="" type="checkbox"/> ADDENDUM 1                                |
| <input checked="" type="checkbox"/> ADDENDUM 2                                         | <input checked="" type="checkbox"/> ADDENDUM 2                                |
| <input checked="" type="checkbox"/> ADDENDUM 3                                         | <input checked="" type="checkbox"/> ADDENDUM 3                                |
| \$                                                                                     | \$ \$ 560,200.00                                                              |
| \$ \$ 495,000.00                                                                       | \$ \$ 530,200.00                                                              |

I certify that the above bids were received sealed and were publicly opened and read aloud at the time and place indicated and that this is a true and correct tabulation of all bids received for this project.

Chris Lunsford  
Alabama Registration No. 6115

Sworn before me this 30th day of October, 2019.

  
Doris Howard  
My commission expires: January 11, 2021

**CITY OF GAUTIER  
Business Agenda Item #2  
Fact Sheet**

**Council Meeting:**  
**Title:**

**December 3, 2019**  
**Approval of the Professional Services**  
**Agreement with Seymour Engineering for**  
**General Services**

**Introduced by:**  
**Contact Person/Telephone**

**April Stennett 497-8000 Ext. 315**

**Summary Explanation: Authorization to enter into a Professional Services Agreement with Seymour Engineering for general services**

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input type="checkbox"/>            |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract/Agreement</b>      | <input checked="" type="checkbox"/> |
| <b>Minutes</b>                 | <input type="checkbox"/>            |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input checked="" type="checkbox"/> |
| <b>Other/Discussion</b>        | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**  
**Approval**

**Motion Made by:**

**Torjusen** ☐ **Martin** ☐ **George** ☐ **Jackson** ☐ **Vaughan** ☐ **Anderson** ☐ **Colledge** ☐

**Second Made by:**

**Torjusen** ☐ **Martin** ☐ **George** ☐ **Jackson** ☐ **Vaughan** ☐ **Anderson** ☐ **Colledge** ☐

| <b>Voted as follows:</b> |                 | <b>AYES</b>              | <b>NAYS</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | <b>Torjusen</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | <b>Martin</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | <b>George</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | <b>Jackson</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | <b>Vaughan</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | <b>Anderson</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | <b>Colledge</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 000-2019**

**WHEREAS**, Seymour Engineering has been performing professional services to the City under an expiring agreement;

**WHEREAS**, the services furnished by Seymour Engineering include miscellaneous studies, field investigations, reports, reviews, design, construction phase and other assigned responsibilities to support the operation of the City; and

**WHEREAS**, the Mayor and Members of the Council of the City of Gautier, Mississippi, hereby find that entering the attached professional services agreement with Seymour Engineering for a new term is in the best interests of the City;

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the City is hereby authorized to enter into a professional services agreement with Seymour Engineering for professional services through June 30, 2021.

**IT IS FURTHER ORDERED** that this work will operate through the engineering budget Mayor and Council approved on such small items.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary for this purpose.

Motion was made by **BLANK**, seconded by **BLANK** and the following vote was recorded:

**AYES:**

**NAYS:**

---

**MAYOR**

**ATTEST:**

---

**CITY CLERK**

**BLANK** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of December 3, 2019.

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** April Stennett, Grants Administrator  
**Date:** 11/25/2019  
**Subject:** Approval of a General Services Agreement with Seymour Engineering

---

**REQUEST:**

The Grants and Projects Department requests that City Council approve the Professional Services Agreement with Seymour Engineering for general services.

**BACKGROUND:**

From time to time, the need arises for an engineer to look at small jobs and make recommendations as to how they can be resolved by public works. This includes drainage, ditches, culverts, and water and sewer issues. The need also arises for surveys and easements.

**DISCUSSION:**

The city's current general services contract with Seymour has expired, and this new agreement would last through June 30, 2021. This contract would enable the City Manager to ask for engineering assistance on small jobs as needed. The City Manager will operate within the engineering budget the Council approved on such small items.

**RECOMMENDATION:**

The Grants and Projects Department recommends that City Council approve the Professional Services Agreement between the City of Gautier and Seymour Engineering.

The City Council may:

- 1) Approve the Professional Services Agreement between the City of Gautier and Seymour Engineering; or
- 2) Not approve the Professional Services Agreement between the City of Gautier and Seymour Engineering.

**ATTACHMENTS:**

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN CITY OF GAUTIER AND  
SEYMOUR ENGINEERING, PLLC**

The AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2019, by City of Gautier, hereinafter referred to as the OWNER, and Seymour Engineering, PLLC, hereinafter referred to as ENGINEER, WITNESSETH, that the parties hereto mutually agree as follows:

WHEREAS, the OWNER selected ENGINEER as the City Engineer to furnish miscellaneous studies, field investigations, reports, reviews, design, construction phase and other assigned responsibilities to support the OWNER in the municipal operation of the City, hereinafter referred to as PROFESSIONAL Services; and

WHEREAS, the OWNER and the ENGINEER have agreed upon the scope of services to be provided by the ENGINEER under the terms set forth in this AGREEMENT.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

**PURPOSE**

The purpose of this AGREEMENT is to establish the ENGINEER's scope of services and payment provisions for the PROFESSIONAL SERVICES.

**ARTICLE I - ENGINEER'S RESPONSIBILITIES**

1. The ENGINEER shall perform the work under this AGREEMENT in accordance with the following:

**ARTICLE II - ENGINEER'S RESPONSIBILITIES**

1. The ENGINEER shall have sole responsibility for and furnish all necessary labor, direct and indirect cost to perform and complete the PROFESSIONAL SERVICES which may be requested by the OWNER.

**ARTICLE III - PERIOD OF SERVICES**

1. The period of services shall be thru June 30, 2021.

**ARTICLE IV - COMPENSATION**

1. As consideration for providing the services enumerated in the AGREEMENT, the OWNER shall pay the ENGINEER at the Standard Hourly Rates (including reimbursable) as shown in Exhibit A attached to this AGREEMENT.
2. The ENGINEER shall submit invoices to the OWNER once per month during the progress of the work. Such invoices shall be reviewed and approved by the OWNER for reimbursement. Payment will be made to the ENGINEER within 30 days following receipt of the invoice.

## **ARTICLE V - LEGAL RELATIONS**

1. The ENGINEER shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this AGREEMENT.
2. The ENGINEER shall maintain throughout the Period of Services defined in Article III of this AGREEMENT the following coverage.
  - 2.1 Professional errors and omissions coverage with a limit of \$1,000,000.00 per occurrence.
  - 2.2 Workmen's Compensation and Employer's Liability Insurance and any other insurance coverage as may be required by law in the State of Mississippi.
  - 2.3 Comprehensive Automobile and Vehicle Liability Insurance. This insurance shall be written in comprehensive form and shall protect the OWNER against claims for injuries to members of the public and/or damage to property of others arising from ENGINEER's use of motor vehicles or any other equipment and shall cover operation with respect to operations under this AGREEMENT. The limits of liability shall not be less than the following:

|                 |                                                          |
|-----------------|----------------------------------------------------------|
| Bodily Injury   | \$500,000.00 each person<br>\$500,000.00 each occurrence |
| Property Damage | \$500,000.00 each occurrence                             |
  - 2.4 Comprehensive General Liability:

This insurance shall be written in comprehensive form including OWNERS' protective products and operations insurance and shall protect the OWNER against claims arising out of any act, or omission to act, of the ENGINEER or any of its agents, employees or subcontractors.

The limits of liability shall not be less than the following:

|                            |                                                            |
|----------------------------|------------------------------------------------------------|
| Bodily and Personal Injury | \$300,000.00 each person<br>\$1,000,000.00 each occurrence |
| Property Damage            | \$500,000.00 each occurrence<br>\$500,000.00 aggregate     |
  - 2.5 The insurance coverage specified above shall constitute minimum requirements.

3. Insurance furnished in compliance with the above must be with an insurance company either authorized to do business in the State of Mississippi, or said policy shall be registered and delivered in accordance with the insurance laws of the State of Mississippi.
4. ENGINEER agrees to indemnify owner for any and all claims, damages, legal fees and expenses incurred arising out of or caused by any acts or omissions of ENGINEERS, its agents and employees under the AGREEMENT.
5. ENGINEER shall be construed to be an independent consultant.

#### **ARTICLE VI - CHANGES, AMENDMENTS**

1. This AGREEMENT may be amended as mutually deemed necessary by the ENGINEER and the OWNER, such amendments shall be made a part of the AGREEMENT.
2. Nothing in this AGREEMENT shall preclude the ENGINEER and the OWNER from clarifying, adding to, or reducing the scope of the AGREEMENT.

#### **ARTICLE VII - MISCELLANEOUS**

All work under this AGREEMENT shall be performed in accordance with generally accepted professional standards, and shall be subject to inspection and acceptance of the OWNER. The ENGINEER shall be responsible for the technical adequacy of his work.

This AGREEMENT (consisting of Pages 1 to 3 inclusive) together with the Exhibits identified herein constitute the entire AGREEMENT between the OWNER and ENGINEER and supersede all prior written or oral understandings. This AGREEMENT and said Exhibits may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT as of the day and year first above written.

ACCEPTED FOR OWNER:

CITY OF GAUTIER

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ATTEST

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ACCEPTED FOR ENGINEER:

SEYMOUR ENGINEERING, PLLC

---

ATTEST

---



## EXHIBIT A

### SEYMOUR ENGINEERING STANDARD HOURLY RATES

|                                                          |               |
|----------------------------------------------------------|---------------|
| PRINCIPAL ENGINEER (P.E.) .....                          | \$175.00/HOUR |
| SENIOR STRUCTURAL/CIVIL ENGINEER (P.E.) .....            | \$150.00/HOUR |
| ENGINEER (P.E.) .....                                    | \$140.00/HOUR |
| PROJECT MANAGER .....                                    | \$125.00/HOUR |
| ENGINEER (E.I.T.) .....                                  | \$100.00/HOUR |
| ENVIRONMENTAL SCIENTIST.....                             | \$ 95.00/HOUR |
| SENIOR ENGINEERING TECHNICIAN.....                       | \$ 85.00/HOUR |
| TECHNICIAN/INSPECTOR .....                               | \$ 75.00/HOUR |
| DESIGN/CADD TECHNICIAN.....                              | \$ 75.00/HOUR |
| DRAFTSMAN (CADD) .....                                   | \$ 65.00/HOUR |
| ADMINISTRATIVE ASSISTANT/SPECIFICATIONS TECHNICIAN ..... | \$ 50.00/HOUR |
| CLERICAL .....                                           | \$ 40.00/HOUR |
| SURVEY TECHNICIAN (P.L.S.) .....                         | \$ 85.00/HOUR |
| PARTY CHIEF .....                                        | \$ 70.00/HOUR |
| SURVEY ASSISTANT .....                                   | \$ 60.00/HOUR |
| SURVEY CREW (TWO-MAN).....                               | \$125.00/HOUR |
| SURVEY CREW (THREE-MAN) .....                            | \$145.00/HOUR |
| SURVEY CREW (GLOBAL POSITIONING SYSTEM).....             | \$145.00/HOUR |
| HYDROGRAPHIC SURVEY CREW.....                            | \$150.00/HOUR |

#### REIMBURSABLE

Travel, lodging, shipping and reproduction costs shall be reimbursable expenses billed to the project.

**CITY OF GAUTIER  
Business Agenda Item #3  
Fact Sheet**

**Council Meeting:**  
**Title:**

**December 3, 2019**  
**Authorization to approve Change Order No. 2 for  
the City Park Fitness Trail project**

**Introduced by:**  
**Contact Person/Telephone**

**April Stennett 497-8000 ext. 315**

---

**Summary Explanation: Authorization to approve Change Order No. 2 for the City Park Fitness Trail project.**

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input type="checkbox"/>            |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract/Agreement</b>      | <input type="checkbox"/>            |
| <b>Minutes</b>                 | <input type="checkbox"/>            |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input checked="" type="checkbox"/> |
| <b>Other</b>                   | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**

**Approval**

---

**Motion Made by:**

**Torjusen** ☐ **Martin** ☐ **George** ☐ **Jackson** ☐ **Vaughan** ☐ **Anderson** ☐ **Colledge** ☐

**Second Made by:**

**Torjusen** ☐ **Martin** ☐ **George** ☐ **Jackson** ☐ **Vaughan** ☐ **Anderson** ☐ **Colledge** ☐

| <b>Voted as follows:</b> |                 | <b>Ayes</b>              | <b>Nays</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | <b>Torjusen</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | <b>Martin</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | <b>George</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | <b>Jackson</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | <b>Vaughan</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | <b>Anderson</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | <b>Colledge</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 000-2019**

**WHEREAS**, the City of Gautier has awarded and executed a contract with Advanced Construction and Development, LLC, to construct the City Park Fitness Trail; and

**WHEREAS**, Seymour Engineering is providing surveying, engineering plans and specifications, and construction phase services (bidding and construction administration) for the City Park Fitness Trail; and

**WHEREAS**, Change Order No. 2 would add a stone pad for additional exercise equipment, install five additional drainage pipes to the fitness trail, and add 100 days to the contract due to site conditions, additional scope, and weather; and

**WHEREAS**, the cost of Change Order No. 2 is \$8,793 and will increase the contract sum from \$156,083 to \$164,876; and

**WHEREAS**, this project is being funded through Tidelands and the general obligation bond; and

**WHEREAS**, Seymour Engineering has reviewed the change order and recommends approval;

**WHEREAS**, it is in the best interest of the City of Gautier to approve the change order; and

**WHEREAS**, the Mayor and Council Members find, consistent with fact, that this change order is necessary and incidental to the completion of the work as originally bid, is commercially reasonable, is not made to circumvent the public purchasing statutes, and that the increase in costs is reasonable;

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that Change Order No.2 for the City Park Fitness Trail Project is hereby approved.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary for this purpose.

Motion was made by **BLANK** seconded by **BLANK** and the following vote was recorded:

**AYES:**

**NAYS:**

---

**MAYOR**

**ATTEST:**

---

**CITY CLERK**

**BLANK** by Mayor and Members of the Council of the City of Gautier, Mississippi,  
at the meeting of December 3, 2019.

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** April Stennett, Grants Administrator  
**Date:** 11/25/2019  
**Subject:** City Park Fitness Trail — Change Order No. 2

---

**REQUEST:**

The Grants and Projects Department requests that City Council approve Change Order No. 2 for the City Park Fitness Trail project.

**BACKGROUND:**

This project includes a half-mile asphalt trail with outdoor exercise/fitness modules, exercise instructions, trail signage and a small parking area in the undeveloped portion of City Park, east of current amenities. The trail will also tie into the senior center parking area and back side of the playground.

Seymour Engineering is providing surveying, engineering plans and specifications, and construction phase services (bidding and construction administration) for the City Park Fitness Trail. Advanced Construction and Development, LLC received the contract to construct the trail

**DISCUSSION:**

Change Order No. 2 would add a stone pad for additional exercise equipment, concrete footings for select equipment, and install five additional drainage pipes to the fitness trail. This change order would also add 100 days to the contract (delays due to weather, site conditions and additional scope).

The cost of this change order is \$8,793. The contract sum will be increased from \$156,083 to \$164,876.

Seymour Engineering has reviewed the change order and recommends approval. This project is being funded through Tidelands and the general obligation bond.

**RECOMMENDATION:**

The Grants and Projects Department recommends that City Council approve Change Order No. 2 for the City Park Fitness Trail project.

The City Council may:

- 1) Approve Change Order No. 2 as presented; or
- 2) Not approve Change Order No. 2 as presented.

**ATTACHMENTS:**

## CHANGE ORDER

---

**OWNER:**

The City of Gautier  
3330 U.S.-90  
Gautier, MS 39553

**CHANGE ORDER NO.**

2

**DATE:** November 25, 2019

**CONTRACTOR:**

Advanced Construction and Development, LLC  
619 Hillside Drive  
Biloxi, MS 39532

**ENGINEER:** Seymour Engineering, PLLC

**PROJECT:** City Park Nature Trail,  
Gautier, Mississippi

---

**SUMMARY:**

This change order serves to increase the contract amount and increase the contract time.

The following Items have been added to the Contractor's scope of work:

- Construct a #57 stone pad (24'Wx21'L) for the City's fitness equipment. This includes all incidental work needed such as select fill, fabric, grassing, border, etc. (see attached Fitness Equipment Pad layout).
- Construct the concrete footings needed to support the fitness equipment selected by the City being the Chest Press, Elliptical Machine, Leg Press, Rowing Machine, Ski Walker, and Two-Sided Rotator, all of which are distributed by *Outdoor Fitness, Inc.* (see attached equipment footing requirements).
- Insall five (5) additional drainage pipes in various locations (see attached site layout map with new pipe crossing locations) and grade accordingly to said pipes which includes demo of asphalt, piping, new asphalt, or any other work associated with the installation.

The addition of these items to the Contract will increase the contract amount by \$8,793.00.

Given the additional scope, rain delays, site conditions due to rain, and to allow the asphalt paving of the parking area to be performed by others, the Contract Time will need to be extended by 100 days.

---

**THE CONTRACT AMOUNT IS AS SHOWN ON THE NEXT PAGE:**

**THE CONTRACT IS AMENDED AS SHOWN BELOW:**

**(Not valid until executed by the Owner, Engineer, and Contractor)**

|                                                           |               |
|-----------------------------------------------------------|---------------|
| The original Contract Sum:                                | \$177,000.00  |
| Net Change by previously authorized Change Orders:        | (\$20,917.00) |
| The Contract Sum prior to this Change Order was:          | \$156,083.00  |
| The Contract Sum will now Change (+):                     | \$8,793.00    |
| The New Contract Sum including this Change Order will be: | \$164,876.00  |

|                                                                |            |
|----------------------------------------------------------------|------------|
| The original Contract Time:                                    | 3/25/2019  |
| Net Change by previously authorized Change Orders:             | 50         |
| The Date of Substantial Completion prior to this Change Order: | 9/11/2019  |
| The Contract Time will now Change by (+) days:                 | 100        |
| The New Date of Substantial Completion will be:                | 12/20/2019 |

CONTRACTOR:

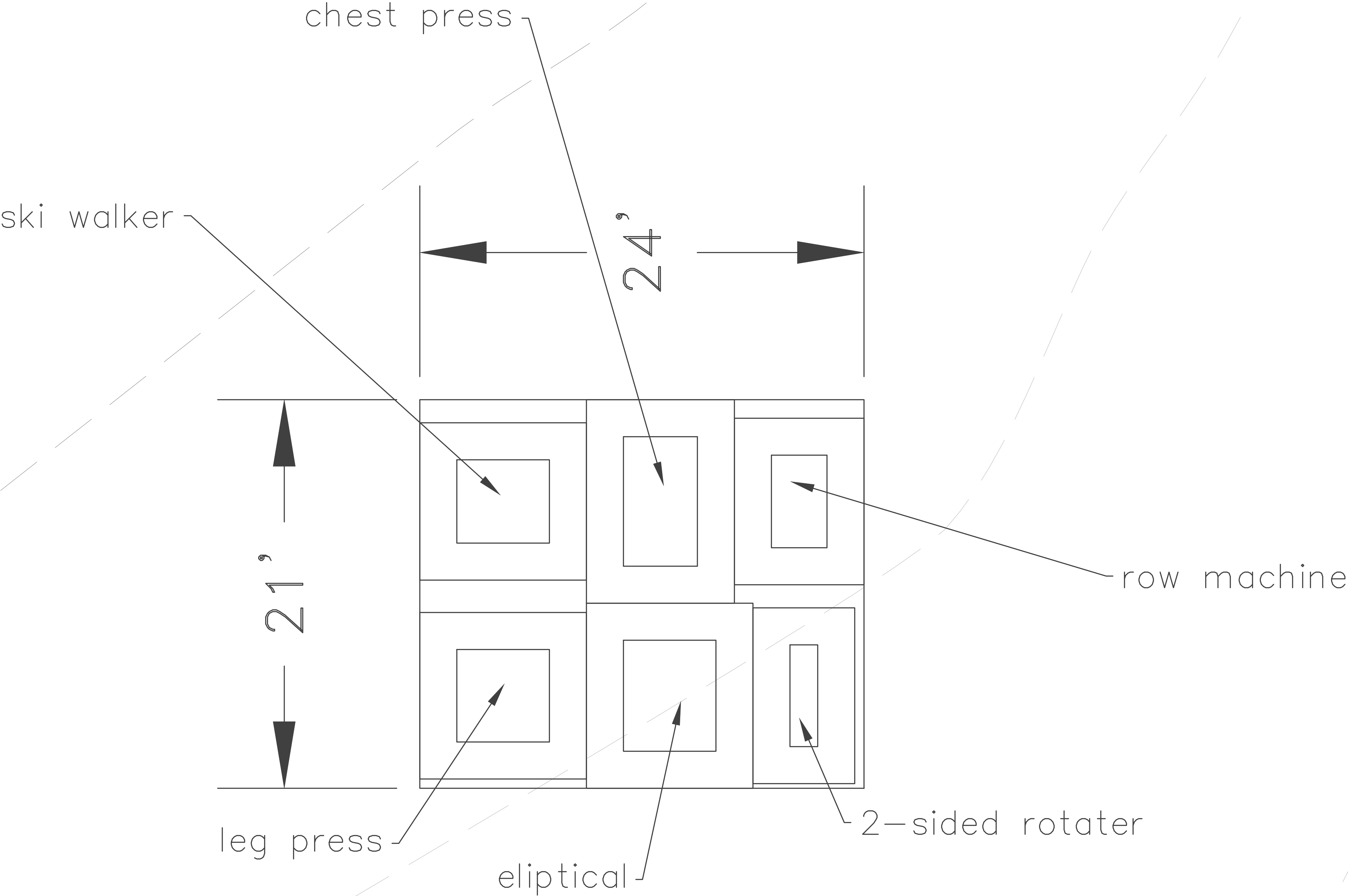
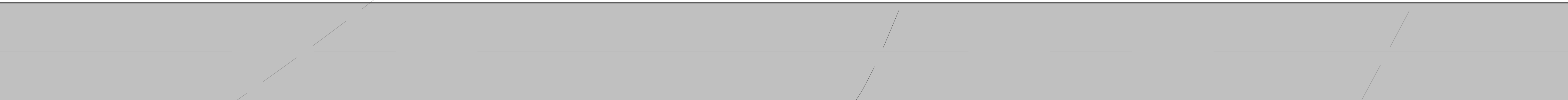
ENGINEER:

OWNER:

By: \_\_\_\_\_ By:  By: \_\_\_\_\_

Date: \_\_\_\_\_ Date: 11/25/2019 Date: \_\_\_\_\_







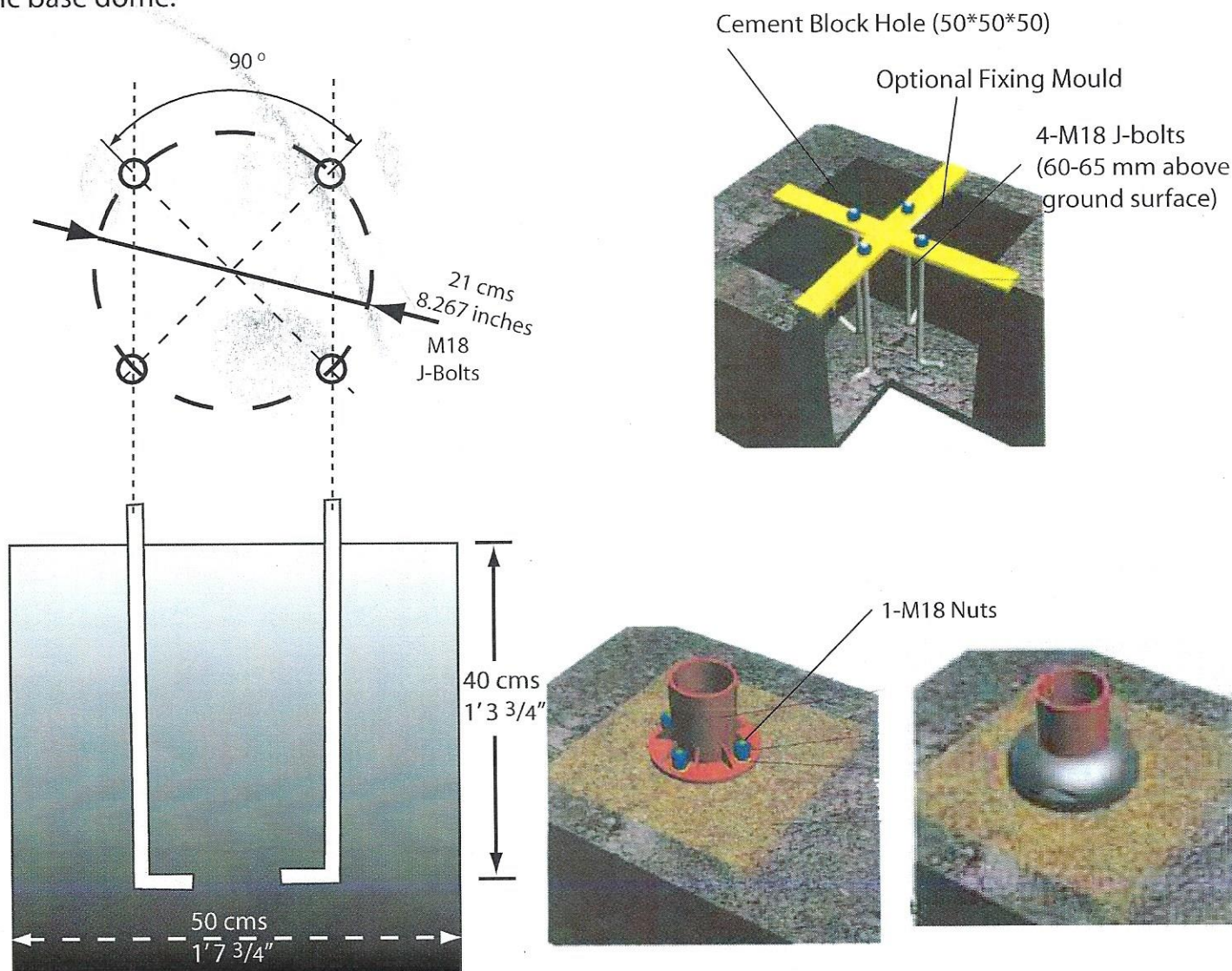
# CHEST PRESS DOUBLE

# OUTDOOR FITNESS

## Installation Diagram

(877) 517-2200 or (719) 488-3812  
support@outdoor-fitness.com

- Excavate a hole measuring 50\*50\*50 cms ( 1'7 <sup>3</sup>/<sub>4</sub>" ) as per the drawing.
- First pour cement into the hole to form a cement layer of 100 mm. Installer should create a template based on the position of the holes on the equipment, then position the J-bolts with the do-it-yourself fixing mould and put the bolts into the hole. (Refer to the diagram below).
- Pour concrete into the hole assuring that bolts are perpendicular to and 6.0 - 6.5 centimeters (2 <sup>1</sup>/<sub>2</sub>" ) above the ground surface. After pouring, double check the position of the anchor bolts against the actual positioning the equipment and make sure the concrete surface is very flat. Allow concrete to set for 24 hours prior to permanently placing the equipment.
- When the concrete is hardened; fasten the equipment to the J-bolts with 4 M18 nuts together with M18 spacers, as illustrated. After installation, check the perpendicularity of the equipment to ground surface with tolerance less than 1/100. Cover the Anchor bolts with plastic base dome.

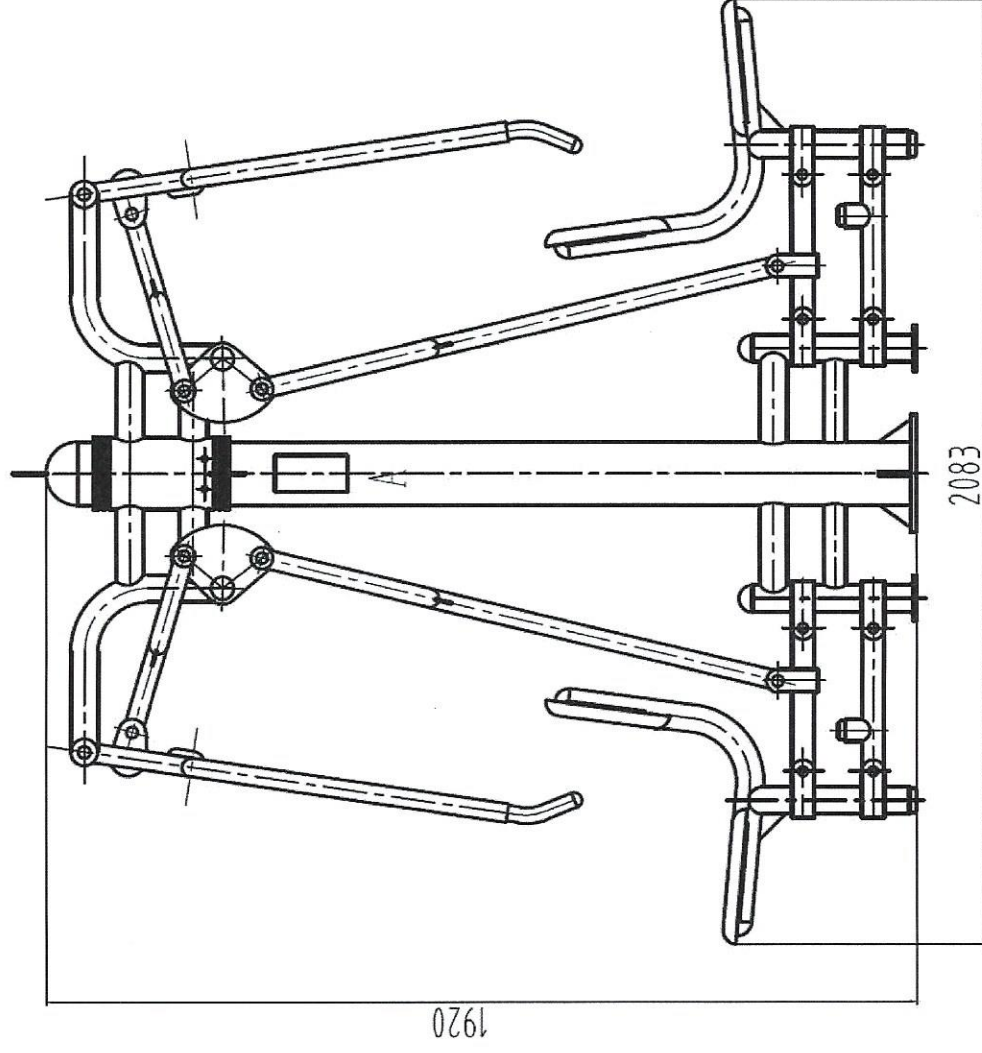
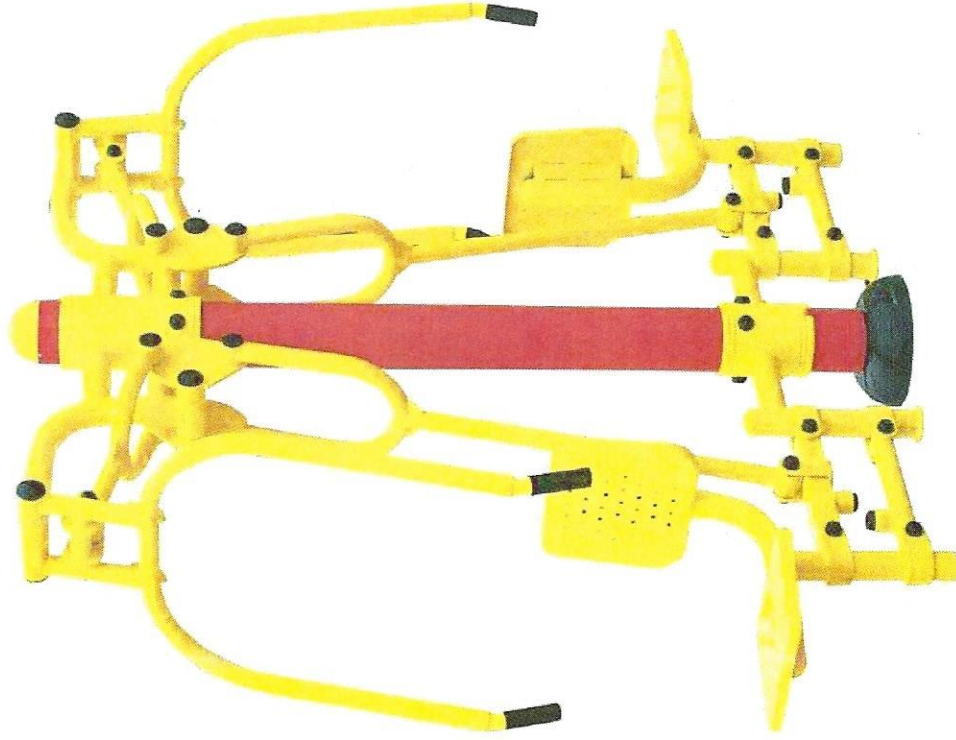


## CHEST PRESS (Pg2)

## OUTDOOR FITNESS

Installation Diagram

(877) 517-2200 or (719) 488-3812  
support@outdoor-fitness.com



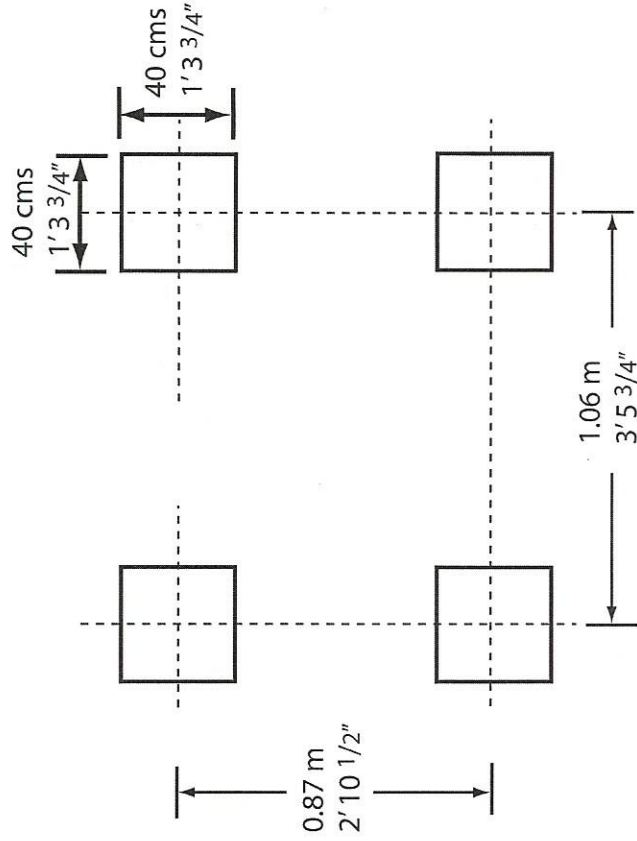


# SKI WALKER

Installation Diagram

# OUTDOOR FITNESS

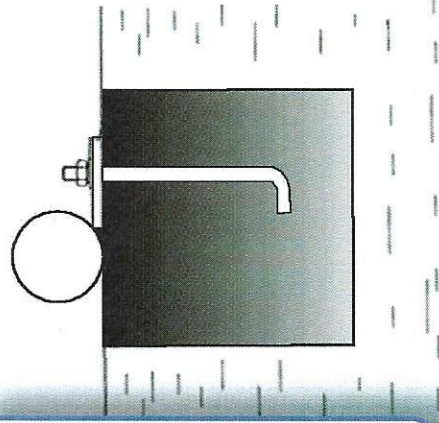
(877) 517-2200 or (719) 488-3812  
support@outdoor-fitness.com



## Instructions:

Excavate 4 holes measuring 40\*40\*40 centimeters ( 1' 3 3/4" ) as per the drawing .

Attach anchor bolts to the equipment. Place in hole using equipment as template for positioning the anchor bolts. Pour cement into the hole to form a cement layer and firmly hold the anchor bolts. Remove equipment as cement dries, allowing up to 24 hours. When the concrete is hardened, put the equipment on the surface of the cement using bolts to fix in place.

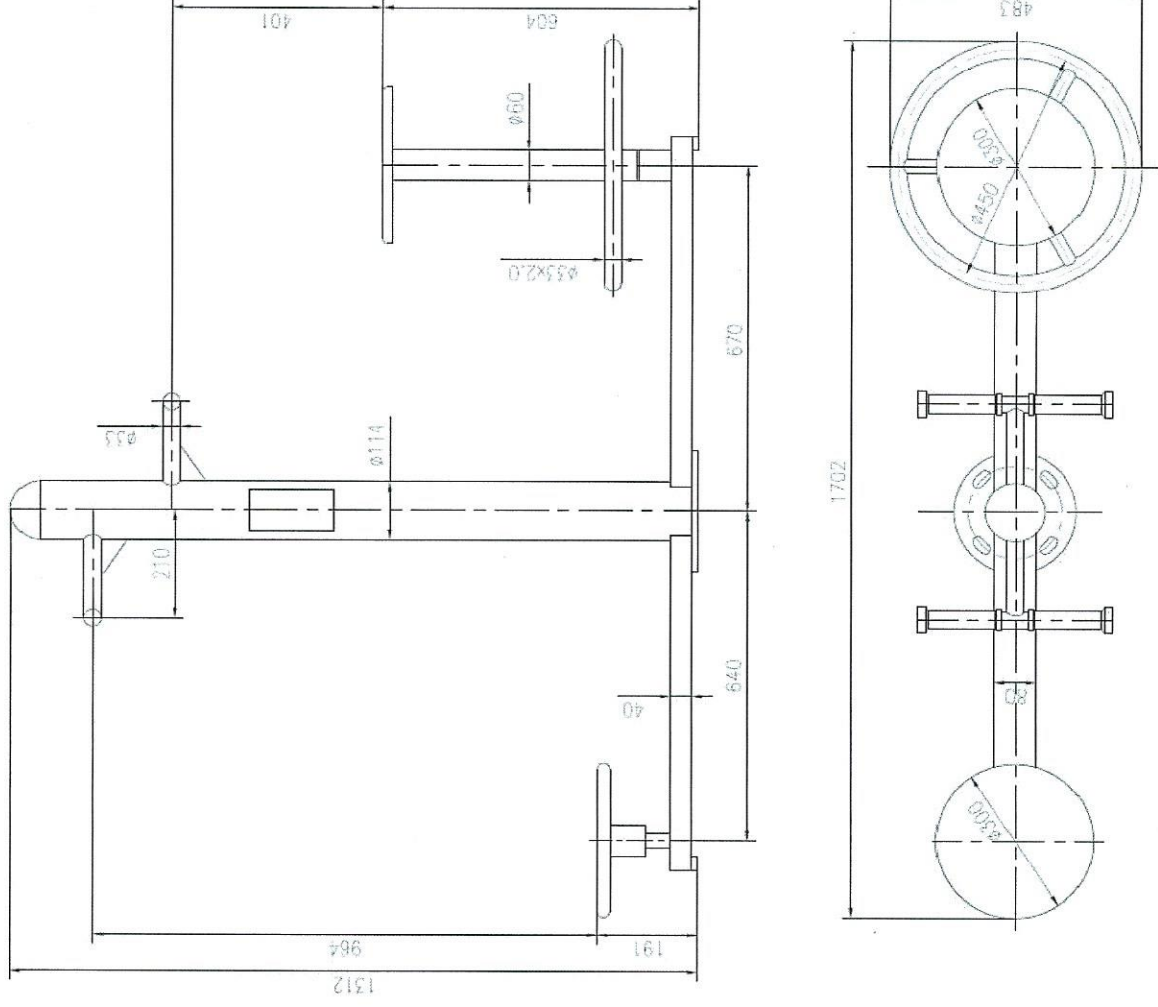


# TWO-SIDED ROTATOR

Installation Drawing

# OUTDOOR FITNESS

(877) 517-2200 or (719) 488-3812



## Dimensions (installed)

|        |        |           |
|--------|--------|-----------|
| Length | 1.7 m  | 5' 7 1/4" |
| Width  | 0.48 m | 1' 7"     |
| Height | 1.31 m | 4' 4"     |

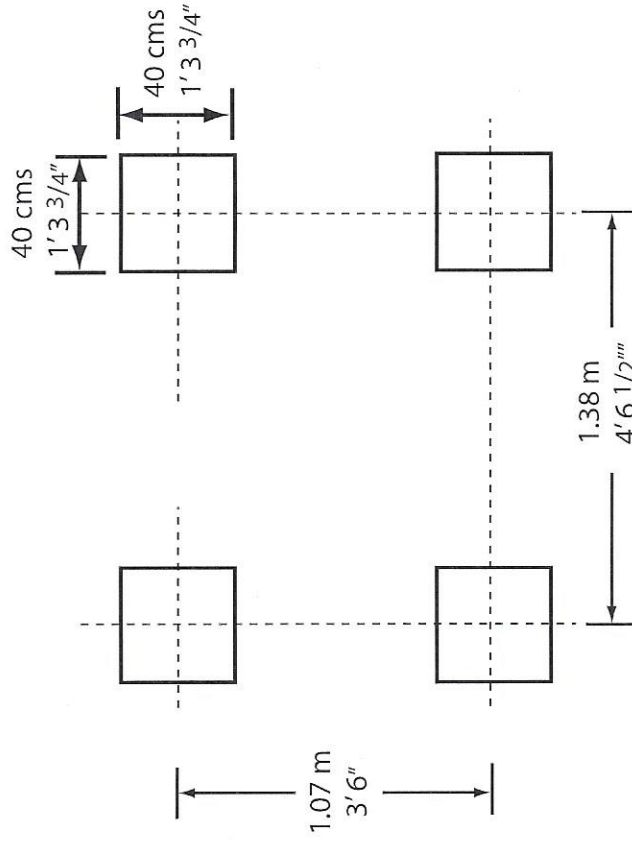
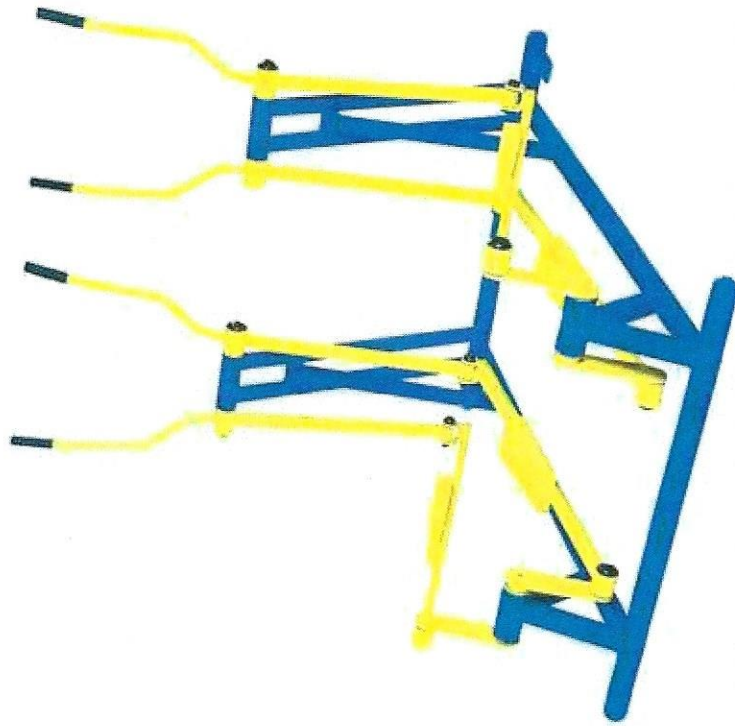


# ELLIPTICAL MACHINE DOUBLE

# OUTDOOR FITNESS

Installation Diagram

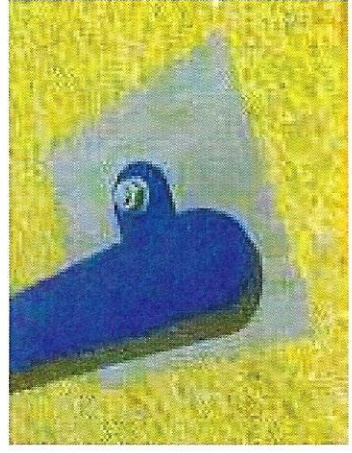
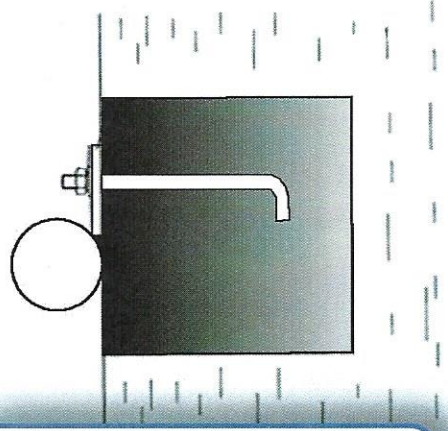
(877) 517-2200 or (719) 488-3812  
support@outdoor-fitness.com



## Instructions:

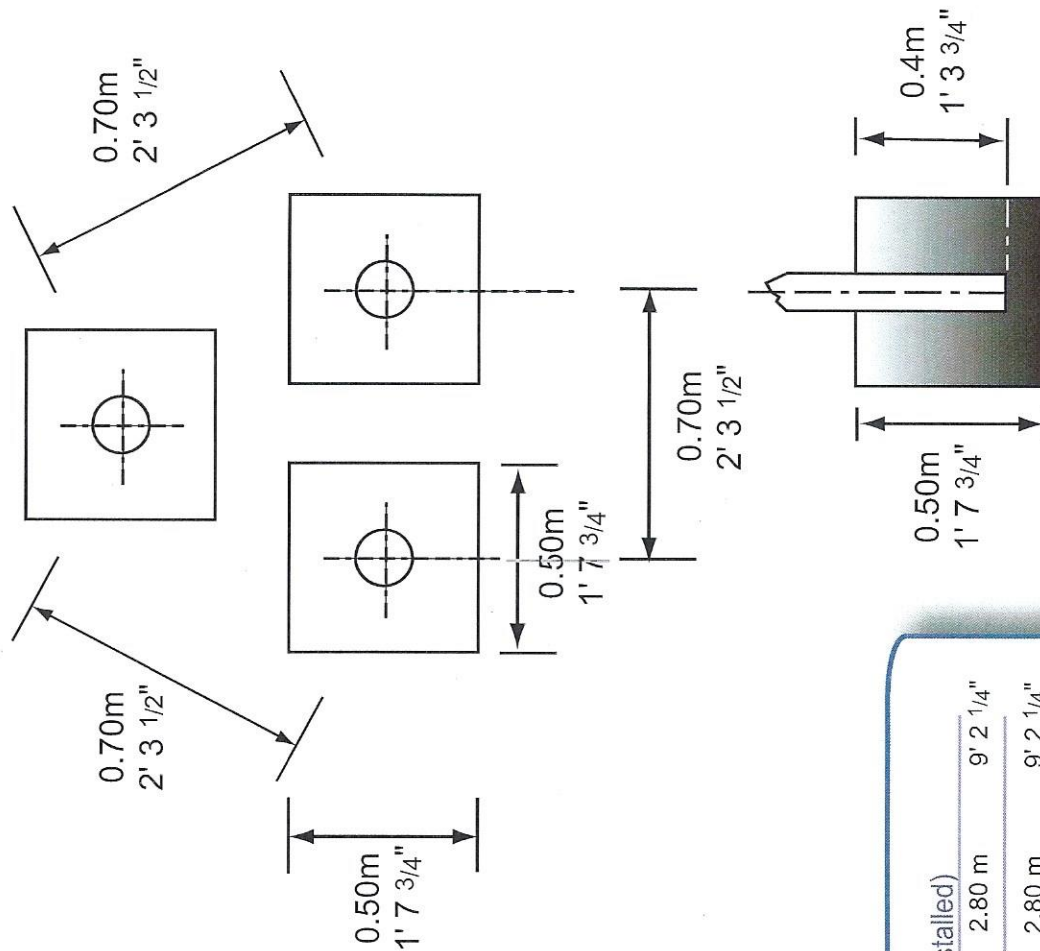
Excavate 4 holes measuring 40\*40\*40 centimeters ( 1'3 3/4" ) as per the drawing .

Attach anchor bolts to the equipment. Place in hole using equipment as template for positioning the anchor bolts. Pour cement into the hole to form a cement layer and firmly hold the anchor bolts. Remove equipment as cement dries, allowing more than 24 hours. When the concrete is hardened, put the equipment on the surface of the cement using bolts to fix in place.



## OUTDOOR FITNESS

Installation Support  
(877) 517-2200 or (719) 488-3812  
support@outdoor-fitness.com



| Weight      | Dimensions (installed) |            |
|-------------|------------------------|------------|
| Net Weight  | 202.0 kgs.             | 445.3 lbs. |
| Ship Weight | 211.0 kgs.             | 465.2 lbs. |
|             | Length                 | 2.80 m     |
|             | Width                  | 2.80 m     |
|             | Height*                | 2.50 m     |
|             |                        | 9' 2 1/4"  |
|             |                        | 9' 2 1/4"  |
|             |                        | 8' 2 1/2"  |

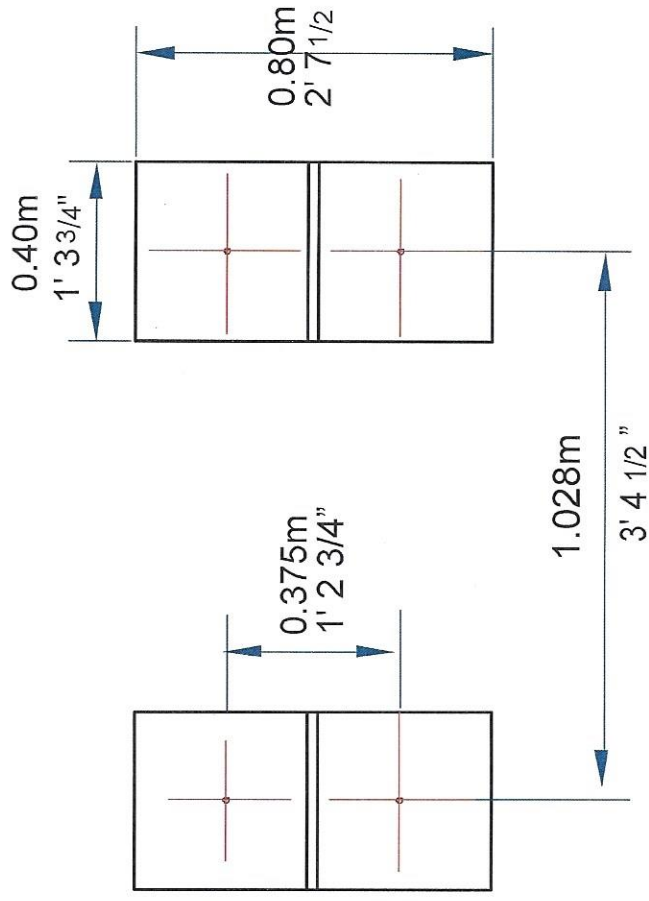


# ROWING MACHINE

# OUTDOOR FITNESS

Installation Drawing

(877) 517-2200 or (719) 488-3812  
support@outdoor-fitness.com



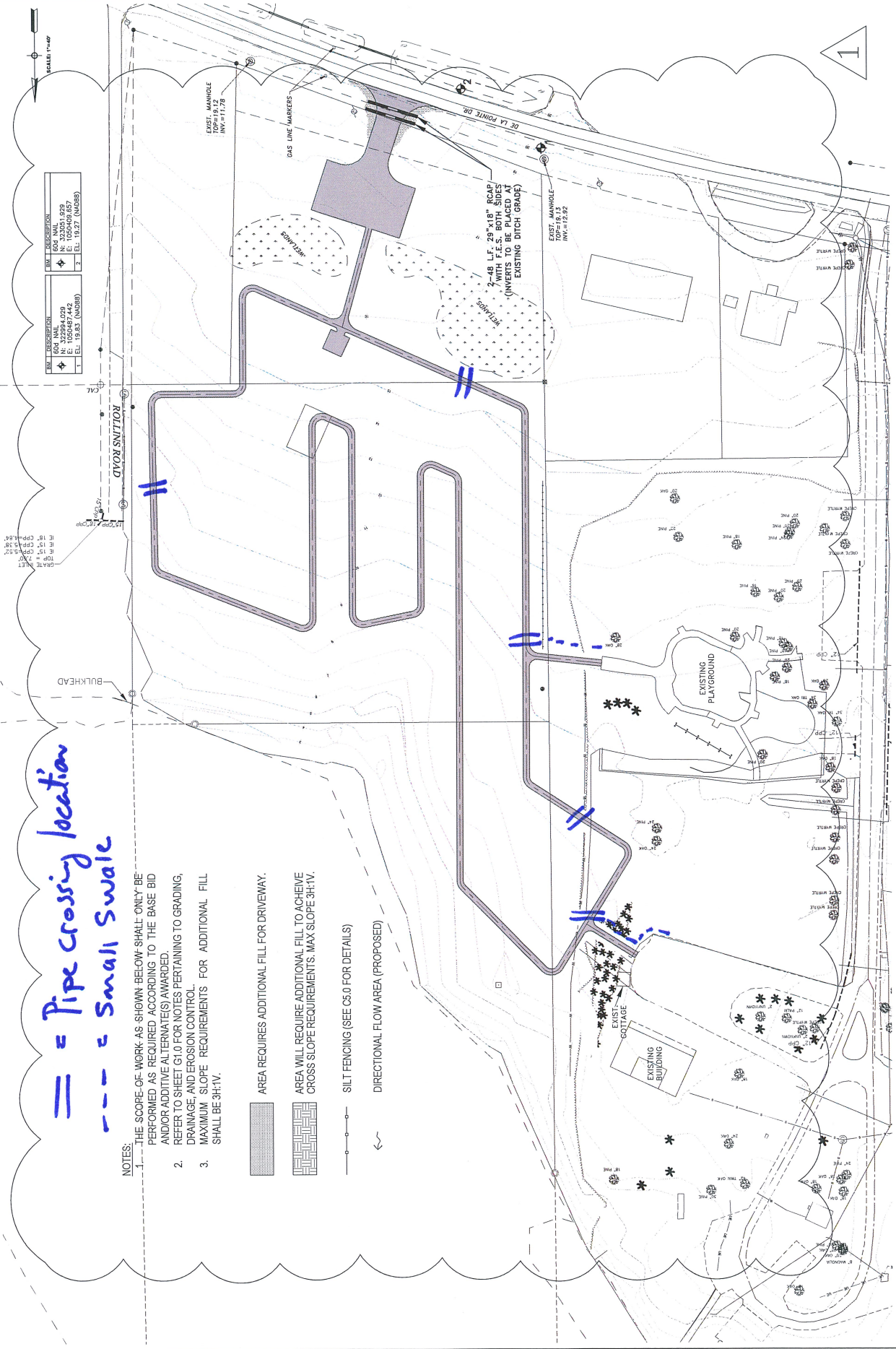
|          |           |
|----------|-----------|
| Drawn    | 10/1/2018 |
| Checked  | 10/1/2018 |
| Approved | 10/1/2018 |
| Date     | 10/1/2018 |

|             |                           |
|-------------|---------------------------|
| Sheet Title | Grading and Drainage Plan |
|-------------|---------------------------|

|              |                                             |
|--------------|---------------------------------------------|
| Project Name | CITY PARK NATURE TRAIL GAUTIER, MISSISSIPPI |
|--------------|---------------------------------------------|

|                     |                                                                                                           |
|---------------------|-----------------------------------------------------------------------------------------------------------|
| SEYMOUR ENGINEERING | 925 TOMMY MUNRO DRIVE, SUITE C<br>BLOOMINGTON, MISSISSIPPI 39532<br>PHONE: 228-385-2350 FAX: 228-385-2353 |
|---------------------|-----------------------------------------------------------------------------------------------------------|

|             |          |
|-------------|----------|
| Sheet       | C3       |
| Project No. | 18-00007 |



== = Pipe crossing location  
 --- = Small Swale

- NOTES:
1. THE SCOPE OF WORK AS SHOWN BELOW SHALL ONLY BE PERFORMED AS REQUIRED ACCORDING TO THE BASE BID AND/OR ADDITIVE ALTERNATE(S) AWARDED.
  2. REFER TO SHEET G1.0 FOR NOTES PERTAINING TO GRADING, DRAINAGE, AND EROSION CONTROL.
  3. MAXIMUM SLOPE REQUIREMENTS FOR ADDITIONAL FILL SHALL BE 3H:1V.

- AREA REQUIRES ADDITIONAL FILL FOR DRIVEWAY.
- AREA WILL REQUIRE ADDITIONAL FILL TO ACHIEVE CROSS SLOPE REQUIREMENTS, MAX SLOPE 3H:1V.
- SILT FENCING (SEE C5.0 FOR DETAILS)
- DIRECTIONAL FLOW AREA (PROPOSED)



**CITY OF GAUTIER  
Business Agenda Item #4  
Fact Sheet**

**Council Meeting:** December 3, 2019  
**Title:** Authorization to Acknowledge Bids and Award Contract for Video Inspection and Flow Monitoring Services for the Old Spanish Trail/ Gautier Vancleave Road Sewer Improvements Project

**Introduced by:**  
**Contact Person/Telephone** April Stennett 497-8000 ext. 315

**Summary Explanation:** Authorization to Acknowledge Bids and Award Contract for Video Inspection and Flow Monitoring Services for the Old Spanish Trail/ Gautier Vancleave Road Sewer Improvements Project

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input type="checkbox"/>            |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract</b>                | <input type="checkbox"/>            |
| <b>Minutes</b>                 | <input type="checkbox"/>            |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input checked="" type="checkbox"/> |
| <b>Other</b>                   | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**

**Approval**

**Motion Made by:**

|          |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
|----------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|
| Torjusen | <input type="checkbox"/> | Martin | <input type="checkbox"/> | George | <input type="checkbox"/> | Jackson | <input type="checkbox"/> | Vaughan | <input type="checkbox"/> | Anderson | <input type="checkbox"/> | Colledge | <input type="checkbox"/> |
|----------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|

**Second Made by:**

|          |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
|----------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|
| Torjusen | <input type="checkbox"/> | Martin | <input type="checkbox"/> | George | <input type="checkbox"/> | Jackson | <input type="checkbox"/> | Vaughan | <input type="checkbox"/> | Anderson | <input type="checkbox"/> | Colledge | <input type="checkbox"/> |
|----------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|

| <b>Voted as follows:</b> |          | <b>Ayes</b>              | <b>Nays</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|----------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | Torjusen | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | Martin   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | George   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | Jackson  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | Vaughan  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | Anderson | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | Colledge | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 000-2019**

**WHEREAS**, the City of Gautier has requested bids for the video inspection and flow monitoring services in connection with Old Spanish Trail/Gautier Vancleave Road Sewer Improvements Project; and

**WHEREAS**, sealed bids for this project were received from four contractors and were opened on November 21, 2019; and

**WHEREAS**, the lowest and best bidder was Suncoast Infrastructure, Inc., with a bid of \$146,340.00; and

**WHEREAS**, the proper proposal documentation, including bid bond, is in order as required by the contract documents; and

**WHEREAS**, Seymour Engineering, the project engineer, has tabulated the bids and recommends awarding the contract to Suncoast Infrastructure, Inc. as the lowest and best bid; and

**WHEREAS**, the Mayor and Members of Council find that it is in the best interests of the City to accept bids and authorize the award and execution of the contract with Suncoast Infrastructure, Inc. for the Old Spanish Trail/Gautier Vancleave Road Sewer Improvements Project in the amount of \$146,340.00; and

**WHEREAS**, the Mayor and Council Members hereby find that Suncoast Infrastructure, Inc. has submitted the lowest and best bid; and

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the award and execution of a contract with Suncoast Infrastructure, Inc., for the Old Spanish Trail/Gautier Vancleave Road Sewer Improvements Project is hereby authorized and approved.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary for this purpose.

Motion was made by **BLANK** seconded by **BLANK** and the following vote was recorded:

**AYES:**

**NAYS:**

---

**MAYOR**

**ATTEST:**

---

**CITY CLERK**

**BLANK** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of December 3, 2019.

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** April Stennett, Grants Administrator  
**Date:** 11/25/2019  
**Subject:** Authorization to Acknowledge Bids and Award Contract for Video Inspection and Flow Monitoring Services for the Old Spanish Trail/Gautier Vancleave Road Sewer Improvements Project

---

**REQUEST:**

The Grants and Projects Department requests that City Council acknowledge receipt of four bids for video inspection and flow monitoring services in connection to the Old Spanish Trail/Gautier Vancleave Road sewer improvements project (RESTORE) and award a contract to the low bidder, Suncoast Infrastructure, Inc.

**BACKGROUND:**

The City of Gautier has been awarded a \$2.3 million grant by the Mississippi Department of Environmental Quality as part of the Mississippi Gulf Coast Water Quality Improvement Program. The city will install a new sanitary sewer system consisting of gravity lines, force mains, and a lift station to transport the sewer to the existing wastewater treatment plant. The new lines will be installed along Old Spanish Trail and Gautier Vancleave Road.

**DISCUSSION:**

Four bids for this project were received and opened Nov. 21, 2019. The bidders were Gulf Coast Underground, LLC, R.S. Allen Construction, Inc., Smith Industrial Services, Inc., and Suncoast Infrastructure, Inc. The low bidder was Suncoast Infrastructure, Inc., with a bid of \$146,340.

Seymour Engineering has checked the bids and recommends approval.

**RECOMMENDATION:**

The Grants and Projects Department recommends that City Council acknowledge receipt of four bids for video inspection and flow monitoring services in connection to the Old Spanish Trail/Gautier Vancleave Road sewer improvements project (RESTORE) and award a contract to the low bidder, Suncoast Infrastructure, Inc.

The City Council may:

- 1) Acknowledge the bids and award a contract to the low bidder, as presented; or
- 2) Not acknowledge the bids and not award a contract to the low bidder as presented.

**ATTACHMENTS:**

SUPPLEMENTARY CONDITIONS  
OF THE  
CONSTRUCTION CONTRACT

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## **SUPPLEMENTARY CONDITIONS**

### **Prepared for the City of Gautier**

#### **GENERAL**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. C-700, 2007 Edition) and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the same meanings stated below, which are applicable to both the singular and plural thereof.

The Contractor's attention is directed to Division 1, GENERAL REQUIREMENTS, which contains other directions pertinent to the project.

#### **SPECIFIC COMMENTS**

##### **ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**

**SC-1.01.A.19. *Engineer*** -- ADD the following language at the end of the last sentence in Paragraph 1.01.A.19:

Wherever in these Contract Documents the word "Engineer" or "E/A" or "A/E" appears, it shall be understood to mean the Engineer, Seymour Engineering, PLLC, and their authorized representatives, acting either directly or indirectly as authorized agents of the Owner.

**SC-1.01.A.29. *Owner*** -- ADD the following language at the end of the last sentence in Paragraph 1.01.A.29:

Whenever in these Contract Documents the word "Owner" appears, it shall be understood to mean the City of Gautier acting by and through their official minutes, and their authorized representatives.

**SC-1.01.A.44. *Substantial Completion*** – AMEND the language in the first sentence of Paragraph 1.01.A.44 to read as follows:

CHANGE the language from “in the opinion of Engineer,” to “in the opinion of the Engineer and Owner,”

##### **ARTICLE 2 – PRELIMINARY MATTERS**

**SC-2.01.B *Evidence of Insurance*** DELETE Paragraphs and 2.01.B in its entirety and INSERT the following in its place:

B. Before any Work at the Site is started, Contractor shall deliver to Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) .which Contractor is required to purchase and maintain in accordance with Article 5.

**SC-2.02 *Copies of Documents*** AMEND the language in the first sentence in Paragraph 2.02.A to read as follows:

CHANGE the language from “up to ten” to “up to three unless otherwise noted in Article 4”.

**SC-2.03 *Commencement of Contract Times; Notice to Proceed*** DELETE the last sentence in its entirety.

**SC-2.06.B *Preconstruction Conference; Designation of Authorized Representative*** AMEND the language in the second sentence in Paragraph 2.06.B to read as follows:

“Contractor’s representative shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of Contractor. Owner’s representative is authorized to act as a liaison with respect to the Project.”

**SC-2.07 Initial Acceptance of Schedules** ADD the following new language at the end of Paragraph 2.07.A.2:

The requirements for specification Section 01300 - Submittals During Construction shall also be met prior to accepting the Schedule of Submittals.

**SC-2.08 Narrative Report Outline** ADD the following new paragraph immediately following Paragraph 2.07:

SC-2.08 A narrative report as outlined in Specification section 01311 shall be required and shall accompany all Payment Applications prior to approval.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

**SC-3.03.A Reporting Discrepancies** Add this sentence to the end of Paragraph 3.03A.1:

1. Even though Contractor is required to notify Engineer as to possible quantity differences, there shall be no price adjustment given to the Contractor as a result of any variation between the estimated quantities and the actual quantities necessary to complete the required work.

**SC-3.03.B Resolving Discrepancies** ADD the following new language at the end of this section:

- c. Whenever the Contract Documents contain contradictions or discrepancies within the document, the most costly means or method shall be applied.

### **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

**SC-4.01.A Availability of Lands** DELETE the last sentence.

**SC-4.01.B Availability of Lands** DELETE this paragraph in its entirety.

**SC-4.02 Subsurface and Physical Conditions** DELETE Paragraph 4.02.A and Paragraph 4.02.B in their entirety and REPLACE 4.02A.1 and 4.02B.1 with the following:

- A.1. Subsurface data known to Owner at the time of considering said project may have changed as a result of weather conditions, regular marine traffic, incidental work within the area, expansion of marsh grasses and submerged aquatic vegetations, etc. Any such change or a combination of change could present different conditions thus have an impact on the quantity of dredge material necessary to complete the required work and comply with all permit requirements.
- B.1. Technical data is advisory only and Contractor is solely responsible for the accuracy of any data used for their field assessment and evaluation of site conditions of required work to be completed.

**SC-4.02.C Site Surveys** ADD the following new paragraph immediately after Paragraph 4.02.B:

- C. *Site Surveys:* Site survey information has been compiled from past records and limited field investigations and although stated with as much accuracy as possible, may contain errors or discrepancies. Contractor shall perform investigations as necessary to accomplish the Work. Any unknown item encountered that impacts the Work shall be handled under Article 4.03.

**SC-4.03.C.1 Possible Price and Times Adjustments** DELETE Paragraph 4.03C Possible Price and Times Adjustments in its entirety and REPLACE with the following:

4.03C. Contractor may only be entitled to an adjustment in price or time due to abnormal weather conditions or other conditions when such claim is validated by Engineer. However, Contractor will not be entitled to increase in price due to any variations in estimated to completed dredge quantities.

**SC-4.04.B.2 Underground Facilities; Not Shown or Indicated** AMEND the language in the second sentence of paragraph 4.04.B.2 to read as follows:

CHANGE the language from “An equitable adjustment shall be made in the Contract Price...” to “An equitable adjustment may be made in the Contract Price...”.

**SC-4.05 Reference Points** AMEND the language in the second sentence of Paragraph 4.05.A to read as follows:

CHANGE the language from “without prior written approval of Owner” to “without prior written approval of Owner and Engineer”.

**SC-4.06 Hazardous Environmental Conditions at Site** DELETE Paragraphs 4.06.A and 4.06.B in their entirety and INSERT the following in their place:

- A. No reports or drawings of hazardous conditions at the site are known to the Owner or Engineer.
- B. Not used.

**SC-4.06.G Hazardous Environmental Conditions at Site** DELETE Paragraphs 4.06.G in its entirety.

**SC-4.07 Site Investigation and Representation** ADD the following new paragraph immediately after Paragraph 4.06:

*SC-4.07 Site Investigation and Representation*

The Contractor acknowledges that he has satisfied himself as to the nature and location of the Work; the general and local conditions, particularly those bearing upon availability of transportation, disposal, handling and storage of materials; availability of labor, water, electric power, and roads; uncertainties of weather, river stages, or similar physical conditions at the site; the conformation and conditions of the ground; the character of equipment and facilities needed preliminary to and during the prosecution of the work; and all other matters which can in any affect the Work or the cost thereof under this Contract. The Contractor further acknowledges subject to conditions in Section 4.02 that he has satisfied himself as to the character, quality, and quantity of surface and subsurface materials and groundwater to be encountered from inspecting the site. Any failure by the Contractor to acquaint himself with all the available information will not relieve him from responsibility for properly estimating the difficulty or cost of successfully performing the Work. Neither the Owner nor the Engineer assumes responsibility for any conclusion or interpretation made by the Contractor.

## **ARTICLE 5 – BONDS AND INSURANCE**

**SC-5.03.B Certificates of Insurance** DELETE Paragraph 5.03.B in its entirety.

**SC-5.03 Certificates of Insurance** ADD the following new paragraph immediately after Paragraph 5.03.E:

- F. The Contractor shall be required to submit a Certificate of Insurance with every pay application; or, no later than every thirty (30) days for the term of Contract. If an approved Certificate of Insurance is not included with the pay application, then it will be considered non-compliant with the Contract Documents and returned to the Contractor.

**SC-5.04 Contractor's Liability Insurance** ADD the following new paragraph immediately after Paragraph 5.04.B:

- C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverages for not less than the following amounts or greater where required by Laws and Regulations:
1. Worker's Compensation, and related coverage under Paragraph 5.04.A.1 and A.2 of the General Conditions:
    - a. Statutory
    - b. Applicable Federal: Statutory (e.g. Longshoreman's)
    - c. Employer's Liability: \$100,000 or Statutory
  2. Contractor's General Liability under Paragraph 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:
    - a. General Aggregate: \$ 1,000,000.00
    - b. Products- Completed \$ 1,000,000.00  
Operations Aggregate
    - c. Personal and Advertising \$ 1,000,000.00  
Injury
    - d. Each Occurrence (Bodily \$ 1,000,000.00  
Injury and Property Damage)
    - e. Property Damage liability insurance will provide Explosion, Collapse and Under-ground coverages where applicable.
    - f. Excess or Umbrella Liability
      - 1) General Aggregate \$ 1,000,000.00
      - 2) Each Occurrence \$ 1,000,000.00
  3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:
    - a. Bodily Injury:

|               |                 |
|---------------|-----------------|
| Each Person   | \$ 1,000,000.00 |
| Each Accident | \$ 1,000,000.00 |
    - b. Property Damage:

|               |                 |
|---------------|-----------------|
| Each Accident | \$ 1,000,000.00 |
|---------------|-----------------|
    - c. Combined Single:

|          |                 |
|----------|-----------------|
| Limit of | \$ 1,000,000.00 |
|----------|-----------------|

4. The Contractual Liability coverage required by Paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following:
  - a. Bodily Injury:

|             |                 |
|-------------|-----------------|
| Each Person | \$ 1,000,000.00 |
|-------------|-----------------|
  - b. Property Damage:

|                  |                 |
|------------------|-----------------|
| Each Accident    | \$ 1,000,000.00 |
| Annual Aggregate | \$ 1,000,000.00 |
5. The list of names, other persons, or entities to be included on the policy as additional insured are as per Paragraph 5.11.

**SC-5.06.A Property Insurance** DELETE Paragraph 5.06.A in its entirety and INSERT the following in its place:

- A. When available, Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof.
  1. This insurance shall:
    - a. include the interests of Owner, Contractor, Subcontractors, Engineer and any other individuals or entities identified herein, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
    - b. in addition to the individuals and entities specified, include additional insured per Paragraph 5.11.
    - c. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
    - d. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
    - e. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
    - f. allow for partial utilization of the Work by Owner;
    - g. include testing and start up; and
    - h. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.
  2. Contractor shall be responsible for any deductible or self-insured retention.

3. The policies of insurance required to be purchased and maintained by Contractor in accordance with this Paragraph SC-5.06.A shall comply with the requirements of paragraph 5.06.C of the General Conditions.

**SC-5.06.B** DELETE this article in its entirety.

**SC-5.06.E** DELETE this Paragraph in its entirety.

**SC-5.07.A Waiver of Rights** DELETE the third and fourth sentences in their entirety.

**SC-5.07.B** DELETE this Paragraph in its entirety.

**SC-5.11 Additional Insured** ADD the following new paragraph immediately after Paragraph 5.10.

SC- 5.11 *Additional Insured*

- A. Where applicable, all insurance policies shall name the Owner and Engineer as herein before defined as additional insured.

## **ARTICLE 6 – CONTRACTOR’S RESPONSIBILITY**

**SC-6.06 Concerning Subcontractor’s, Suppliers, and Others** ADD a new paragraph immediately after Paragraph 6.06.G:

- H. Owner or Engineer may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on Work performed for Contractor by a particular Subcontractor or Supplier.

**SC-6.07.B Patent Fees and Royalties** DELETE this paragraph in its entirety.

**SC-6.12 Record Documents** ADD a new paragraph immediately after Paragraph 6.12.A:

- B. Owner may withhold progress payments until record documents are properly updated. Final payment may not be made until all record documents are accepted in writing by Owner.

**SC-6.17 Shop Drawings and Samples** ADD the following new paragraphs immediately after Paragraph 6.17.E:

- F. Contractor shall furnish required submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than three submittals. Engineer will record Engineer’s time for reviewing subsequent submittals of Shop Drawings, samples or other items requiring approval and Contractor shall reimburse Owner for Engineer’s charges for such time.
- G. In the event that Contractor requests a substitution for a previously approved item, Contractor shall reimburse Owner for Engineer’s charges for such time unless the need for such substitution is beyond the control of Contractor.

**SC-6.19 Contractor’s General Warranty ~~Warranty~~ and Guarantee** ADD the following new paragraph immediately after Paragraph 6.19.C:

- D. Unless additional warranties are included in the technical specifications, the Contractor shall guarantee all Work for a period of one-year following Substantial Completion.

**SC-6.20 Indemnification** DELETE this article in its entirety and INSERT the following in its place:

- A. Contractor shall defend, indemnify and hold harmless Owner and Engineer, their agents, servants, employees, officers, directors, members, partners, successors and assigns from actions, causes, suits, costs, claims, damages, expenses and demands whatsoever in law or in equity, (including but not limited to all fees and charges of engineers, architects, and attorneys and all court or other dispute resolution costs), with

respect to, or on account of, any injury, including bodily injury, disability or death, or damages to property, including loss of the use thereof, in any way attributable to or in connection with performance of the Contractor under this Contract.

#### **ARTICLE 7 – OTHER WORK AT SITE**

**SC-7.04 *Claims Between Contractors*** ADD a new paragraph immediately after Paragraph 7.03:

##### ***SC-7.04 Claims Between Contractors***

- A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or the construction coordinator, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law.
- B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, the construction coordinator and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any other contractor against Owner, Engineer, Engineer's Consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor's performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, or the construction coordinator on account of any such damage or Claim.
- C. If Contractor is delayed at any time in performing or furnishing Work by any act or neglect of another contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Engineer, and construction coordinator for any delay, disruption, interference, or hindrance caused by any other contractor. This paragraph does not prevent recovery from Owner, Engineer, or construction coordinator for activities that are their respective responsibilities.

#### **ARTICLE 8 – OWNER'S RESPONSIBILITIES**

**SC-8.02 *Replacement of Engineer*** AMEND the language of Paragraph 8.02.A to read as follows: INSERT "resignation or" immediately before "termination". DELETE "to whom Contractor makes no reasonable objection,".

**SC-8.11 *Evidence of Financial Arrangements*** Add the following new paragraph immediately after Paragraph 8.11.A:

- B. On request of Contractor prior to the execution of any Change Order involving a significant increase in the Contract Price, Owner shall furnish to Contractor reasonable evidence that adequate financial arrangements have been made by Owner to enable Owner to fulfil the increased financial obligations to be undertaken by Owner as a result of such Change Order.

#### **ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION**

**SC-9.03 *Project Representative*** AMEND the language in the second sentence of Paragraph 9.03.A to read as follows:

DELETE the language "the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in".



**SC-9.07A *Determination for Unit Price Work*** AMEND the language in the first sentence of Paragraph 9.07 to read as follows:

“Engineer will determine the actual quantities and classifications of completed Unit Price Work performed by Contractor.”

**SC-9.08.B *Decisions on Requirements of Contract Documents and Acceptability of Work*** AMEND the language in the first sentence of Paragraph 9.08.B to read as follows:

“Engineer will, with reasonable promptness, render a written recommendation or decision on the issue referred.”

**SC-9.08.B *Decisions on Requirements of Contract Documents and Acceptability of Work*** AMEND the language in the last sentence of Paragraph 9.08.B to read as follows:

“The date of the Engineer’s recommendation / decision shall be the date it is rendered in writing and provided to both parties.”

**SC-9.08.C *Decisions on Requirements of Contract Documents and Acceptability of Work*** DELETE Paragraph 9.08.C in its entirety and INSERT the following in its place:

“Engineers written recommendation or decision on the issue referred is subject to the provision of Paragraph 10.05.”

#### **ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

**C-10.05.A *Engineer’s Decision Required*** DELETE the last sentence of Paragraph 10.05.A.

**SC-10.05.C Item 1, REPLACE “deny” with “recommend denial of”. Item 2, REPLACE “approve” with “recommend approval of”.**

**SC-10.05.E** DELETE Paragraph 10.05.E in its entirety and INSERT the following in its place:

“Owner or Contractor may invoke dispute resolution in Article 16 within 30 days of the engineer’s recommendation of denial or approval.”

#### **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

**SC-11.03.B** Amend the language in the second sentence of Paragraph 11.03.B as follows:

“*Determinations* of actual quantities and classifications of completed Unit Price Work performed by the Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.”

**SC-11.03.D** DELETE Paragraph 11.03.D in its entirety and INSERT the following in its place:

- D. There shall be no increase in price due to a variation in actual dredge quantities from the estimated quantities and any variation shall be the sole responsibility of Contractor in formulation of his bid and shall include any possible variations from estimate.

#### **ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT ITEMS**

No Comment.

#### **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTIONS, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

**SC-13.03.A** ADD the following new sentence immediately after the first sentence of Paragraph 13.03.A:

Timely notice shall be as stated in the appropriate specification and no less than 24 hours prior to scheduling the Work.

## **ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION**

**SC-14.02.A.1 *Application for Payments*** AMEND the language in the first sentence of Paragraph 14.02.A.1 to read as follows:

CHANGE the language from “At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application accompanied by such supporting documentation as is required by the Contract Documents.” to “On or before the 20<sup>th</sup> day of each month, Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed by the 15<sup>th</sup> of that month, accompanied by such supporting documentation as is required by the Contract Documents.”

**SC-14.02.A.3 *Application for Payments*** DELETE Paragraph 14.02.A.3 in its entirety and INSERT the following in its place:

3. The Owner will retain 10% of the amount of each estimate until final completion of the project. On monthly estimates subsequent to the first estimate submitted that includes invoices for stored materials for which payment to the Contractor has been made, there shall be a signed statement that the invoices have been paid by the Contractor.

The statement shall read as follows:

This is to certify that payment has been made for invoiced materials included in previous monthly estimate no. \_\_\_\_\_ thru \_\_\_\_\_.

Signed: \_\_\_\_\_

In the event that such statement is not furnished or the manufacturers or material suppliers notify the Owner in writing that they have not been paid for materials included on previous estimates, the Owner may reduce payment in accordance with Paragraph 14.02.

**SC-14.02.C *Payment Becomes Due*** AMEND the language in the first sentence of Paragraph 14.02.C.1 to read as follows:

CHANGE the language from “Ten days after presentation of the Application for Payment to Owner,” to “Ten days after approval of the Application for Payment by Owner”.

**SC-14.07.C.1 *Payment Becomes Due*** AMEND the language in the first sentence of Paragraph 14.07.C.1 to read as follows:

CHANGE the language from “Thirty days” to “Sixty days”

**SC-14.09.A.1 *Waiver of Claims*** DELETE this article in its entirety.

## **ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

No comment.

**SC-15.02.C Owner May Terminate for Cause** DELETE the second sentence of Paragraph 15.02.C.

**SC-15.02.D** DELETE in its entirety.

**SC-15.02.F** DELETE in its entirety and REPLACE with: “The termination provisions of the Standard General Conditions of the Construction Contract and the Supplementary Conditions of the Construction Contract shall supercede the termination procedures of any performance bond provided under the provisions of paragraph 5.01A.”

#### **ARTICLE 16 – DISPUTE RESOLUTION**

SC-16.01 Delete Paragraph 16.01 in its entirety and insert the following in its place:

SC-16.01 Meet to Confer and Negotiate

- A. Within 30 days of notice of Engineers recommended action under 10.05C3 or 10.05D, Owner or Contractor may give to the other party written notice of intent to submit the Claim to a process of bilateral negotiations as set forth below
- B. Within 30 days of the delivery of such notice, Owner and Contractor shall meet and confer regarding the Claim. A good-faith effort to negotiate resolution shall be made by both parties.
- C. If the negotiations contemplated by Paragraph SC-16.01.B are unsuccessful, management representatives of Owner and Contractor at least one tier above the individuals who met under SC16.01.B shall meet, confer, and negotiate within 30 days of the closure of the unsuccessful negotiations.
- D. If the Claim is not resolved by negotiation, Engineer’s action under Paragraph 10.05C or a denial pursuant to Paragraphs 10.05C3 or 10.05D may be submitted to a court of competent jurisdiction to be determined or the parties may agree to submit the claim to another dispute resolution process
- E. Nothing in this article shall be deemed to prohibit or interfere with the rights of the parties to file a court action where necessary to preserve their rights to proceed with litigation.

#### **ARTICLE 17 – MISCELLANEOUS**

**SC-17.05 Controlling Law** DELETE Paragraph 17.05.A in its entirety and INSERT the following in its place:

- A. The terms and conditions of this Contract shall be construed and interpreted under, and all respective rights and duties shall be governed by, the laws of the State of Mississippi. Wherever applicable, each provision of these Contract Documents shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of these Contract Documents shall be prohibited by or invalid under applicable law, such provisions shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of these Contract Documents.
- B. This Contract shall not be construed more strictly against one party than the other merely by virtue of the fact that it may have been prepared by one of the parties.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

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Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*—The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the

Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*—See Paragraph 11.01 for definition.

17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*—The individual or entity named as such in the Agreement.

20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*—Sections of Division 1 of the Specifications.

22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*—Polychlorinated biphenyls.

31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such

as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands

furnished by Owner which are designated for the use of Contractor.

42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.

47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. *Unit Price Work*—Work to be paid for on the basis of unit prices.

50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials

and equipment into such construction, all as required by the Contract Documents.

51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

### B. Intent of Certain Terms or Adjectives:

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or *terms* of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to *describe* an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

### C. Day:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

### D. Defective:

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents; or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
- c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

### 2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

### 2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

### 2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

### 2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during

performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

#### 2.06 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

#### 2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the *Contract Times*. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it *provides* a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to *form* and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

### ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

#### 3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

#### 3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at *the* time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, *or* code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

#### 3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field *measurements*. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor *discovers* any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving *Discrepancies*:

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions

in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's *written* interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its *consultants*, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other *project* without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the

party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

#### **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

##### **4.01 *Availability of Lands***

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

##### **4.02 *Subsurface and Physical Conditions***

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and

2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

##### **4.03 *Differing Subsurface or Physical Conditions***

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such

condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners,

employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data;

b. locating all Underground Facilities shown or indicated in the Contract Documents;

c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the



existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.05 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the *scope* of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) *secure* or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area *until* after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 – BONDS AND INSURANCE

### 5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

C. 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 it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

### 5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance *companies* that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### 5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified

in the Supplementary Conditions, *certificates* of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, *certificates* of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

C. Failure of Owner to demand such certificates or other evidence of *Contractor's* full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect *Contractor*.

E. The insurance *and* insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

#### 5.04 *Contractor's Insurance*

A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of *or* result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

6. include completed operations coverage:

a. Such insurance shall remain in effect for two years after final payment.

b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

#### 5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability *insurance* as will protect Owner against claims which may arise from operations under the Contract Documents.

#### 5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;

2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing

by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or *Laws* and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or *renewal* refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the

Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

#### 5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, *agents*, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and *Engineer*, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

#### 5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

#### 5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and *maintained* by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or

of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property *insurance* pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

**ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES**

6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, *methods*, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced *without* written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform *construction* as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or *protection* of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility *for* all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. *All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.*

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and

3) it has a proven record of performance and availability of responsive service.

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times; and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,

b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

c) whether incorporation or use of the proposed substitute item in connection

with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services; and

4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, *technique*, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made *pursuant* to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. *Special Guarantee:* Owner may require Contractor to furnish at *Contractor's* expense a special performance guarantee or other surety with respect to any substitute.

E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by *Contractor* pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner

for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

#### 6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date *indicated* for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor



2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The *divisions* and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement *between* Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### 6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the

performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are *applicable* at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### 6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the *Work*. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be

responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in *Contract Price* or *Contract Times*. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

#### 6.10 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and *Regulations* of the place of the Project which are applicable during the performance of the Work.

#### 6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during *construction*. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

#### 6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in *connection* with the Work. Such responsibility does not relieve Subcontractors of their

responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

D. Contractor shall inform Owner and Engineer of the specific *requirements* of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 *Safety Representative*

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and *responsibilities* shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 6.15 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract *Documents* have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to *Engineer* for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

##### 1. *Shop Drawings:*

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria,

materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. Samples:

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work *performed* prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with

respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage 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 therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A 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 such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

#### **ARTICLE 7 – OTHER WORK AT THE SITE**

##### 7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

##### 7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

### ARTICLE 8 – OWNER'S RESPONSIBILITIES

#### 8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

#### 8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

#### 8.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

#### 8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

#### 8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties with respect to providing lands and easements and providing engineering surveys to

establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

#### 8.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

#### 8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

#### 8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

#### 8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

#### 8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

#### 8.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

#### 8.12 *Compliance with Safety Program*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

## ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

### 9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

### 9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the

responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

### 9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

### 9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

### 9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

### 9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed



by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

#### *9.08 Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

#### *9.09 Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or

entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

#### *9.10 Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

### **ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

#### *10.01 Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

#### 10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

#### 10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

#### 10.04 *Notification to Surety*

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable

bond will be adjusted to reflect the effect of any such change.

#### 10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part;

2. approve the Claim; or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **11.01 *Cost of the Work***

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in

which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

## 11.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances:*

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand

for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance:*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be *deemed* to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. *Determinations* of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit *price* will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the *Contract Price* in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

**ARTICLE 12 – CHANGE OF CONTRACT PRICE;  
CHANGE OF CONTRACT TIMES**

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any *Claim* for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be *determined* as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at

whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

#### 12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times *shall* be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

#### 12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a *Claim* is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the

performance or *progress* of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the *fault* of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the *control* of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

### **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

#### 13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or *Engineer* has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

#### 13.02 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's

safety procedures and programs so that they may comply therewith as applicable.

### 13.03 Tests and Inspections

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be *inspected*, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the *Work*; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without *written* concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.

F. Uncovering Work as provided in Paragraph 13.03.E *shall* be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's

intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

### 13.04 Uncovering Work

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be *uncovered* for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, *expose*, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of *repair* or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

### 13.05 Owner May Stop the Work

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or *fails* to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

### 13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not *defective*. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no *action* that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

### 13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not *promptly* comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and

replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of *equipment* is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended *for* an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The *provisions* of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

### 13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to *all* fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

### 13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if



Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such *corrective* or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work *attributable* to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

## ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

### 14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress

payments on account of Unit Price Work will be based on the number of units completed.

### 14.02 *Progress Payments*

#### A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

#### B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due:*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

*D. Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set-off against the amount recommended; or

d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs

14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

#### 14.03 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

#### 14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of *Substantial Completion* which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If,

after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and *usable* part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.07 *Final Payment*

##### A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
- b. consent of the surety, if any, to final payment;
- c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

##### B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

##### C. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

#### 14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if

Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

#### 14.09 *Waiver of Claims*

A. The *making* and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

### ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

#### 15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

#### 15.02 *Owner May Terminate for Cause*

A. The *occurrence* of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's repeated disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a *performance* bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

#### 15.03 Owner May Terminate For Convenience

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other *right* or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of *anticipated* profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 Contractor May Stop Work or Terminate

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer *fails* to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven *days* after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

### ARTICLE 16 – DISPUTE RESOLUTION

#### 16.01 Methods and Procedures

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become

final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
2. agrees with the other party to submit the Claim to another dispute resolution process; or
3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

## ARTICLE 17 – MISCELLANEOUS

### 17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been *validly* given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### 17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period *falls* on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

### 17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with *the* Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

### 17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

### 17.06 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.



November 25, 2019

Mrs. Paula Yancey  
City Manager  
City of Gautier  
3330 Highway 90  
Gautier, MS 39533

Re: Acknowledge Receipt of Bids and Recommendation of Award  
Old Spanish Trail Wastewater System Upgrades

Dear Mrs. Yancey,

Please be advised that on Thursday, November 21, 2019, at 10:00 a.m., bids were received for the referenced project. As you will see from the attached bid tabulation, Suncoast Infrastructure, Inc. is the low bidder. This contractor has a positive reputation and adequate experience and expertise to perform the duties required by the contract documents. Therefore, I recommend awarding this Contract to Suncoast Infrastructure, Inc. for their bid amount of \$146,340.00.

Should you have any questions or comments, please do not hesitate to call.

Sincerely,

SEYMOUR ENGINEERING

Sarah McLellan, E.I.  
Project Manager

Cc: Ms. April Stennett, Grants and Project Administrator

Attachments: Certified Bid Tabulation  
Contract  
Contract General Conditions  
Contract Supplementary General Conditions  
Required Attachments for RESTORE Direct Component Professional Services Contracts





OLD SPANISH TRAIL WASTEWATER SYSTEM UPGRADES  
CITY OF GAUTIER

CONTRACTOR'S BID TABULATION

Bid Opening: Thursday, November 21, 2019, at 11:00 A.M. Central Time

Location: Gautier City Hall, 3330 US-90 , Gautier, MS 39553

Contractor  
Address  
City, State

Gulf Coast Underground, LLC  
5655 Middle Rd  
Theodore, AL 36582

R.S. Allen Construction, Inc.  
125 Monarch Blvd  
Hattiesburg, MS 39404

Smith Industrial Services, Inc.  
2001 W. 1-65 Service Rd N  
Mobile, AL 36618

SunCoast Infrastructure, Inc.  
P.O. Box 397  
Florence, MS 39073

| Item. No.             | Description                                                     | Quantity | Unit      | Unit Price  | Item Total           | Unit Price   | Item Total           | Unit Price   | Item Total           | Unit Price  | Item Total           |
|-----------------------|-----------------------------------------------------------------|----------|-----------|-------------|----------------------|--------------|----------------------|--------------|----------------------|-------------|----------------------|
| <b>BASE BID</b>       |                                                                 |          |           |             |                      |              |                      |              |                      |             |                      |
| 1                     | Mobilization                                                    | 1        | LS        | \$ 3,500.00 | \$ 3,500.00          | \$ 20,000.00 | \$ 20,000.00         | \$ 16,000.00 | \$ 16,000.00         | \$ 2,655.00 | \$ 2,655.00          |
| 2                     | Traffic Control                                                 | 1        | LS        | \$ 7,500.00 | \$ 7,500.00          | \$ 5,000.00  | \$ 5,000.00          | \$ 900.00    | \$ 900.00            | \$ 500.00   | \$ 500.00            |
| 3                     | 6"-10" Sanitary Sewer Line Standard Cleaning                    | 20,000   | LF        | \$ 1.75     | \$ 35,000.00         | \$ 1.60      | \$ 32,000.00         | \$ 2.00      | \$ 40,000.00         | \$ 2.50     | \$ 50,000.00         |
| 4                     | 6"-10" Sanitary Sewer Line Heavy Cleaning                       | 3,000    | LF        | \$ 2.00     | \$ 6,000.00          | \$ 3.00      | \$ 9,000.00          | \$ 3.00      | \$ 9,000.00          | \$ 3.50     | \$ 10,500.00         |
| 5                     | 15" Sanitary Sewer Line Standard Cleaning                       | 1,000    | LF        | \$ 4.00     | \$ 4,000.00          | \$ 2.25      | \$ 2,250.00          | \$ 1.50      | \$ 1,500.00          | \$ 3.00     | \$ 3,000.00          |
| 6                     | 15" Sanitary Sewer Line Heavy Cleaning                          | 500      | LF        | \$ 8.00     | \$ 4,000.00          | \$ 3.50      | \$ 1,750.00          | \$ 1.50      | \$ 750.00            | \$ 4.75     | \$ 2,375.00          |
| 7                     | 18" Sanitary Sewer Line Standard Cleaning                       | 1,000    | LF        | \$ 6.00     | \$ 6,000.00          | \$ 2.50      | \$ 2,500.00          | \$ 1.50      | \$ 1,500.00          | \$ 5.00     | \$ 5,000.00          |
| 8                     | 18" Sanitary Sewer Line Heavy Cleaning                          | 500      | LF        | \$ 10.00    | \$ 5,000.00          | \$ 4.25      | \$ 2,125.00          | \$ 1.50      | \$ 750.00            | \$ 6.75     | \$ 3,375.00          |
| 9                     | Root/Grease Removal in Existing 6"-12" Sewer Line               | 3,000    | LF        | \$ 0.50     | \$ 1,500.00          | \$ 3.50      | \$ 10,500.00         | \$ 3.50      | \$ 10,500.00         | \$ 1.00     | \$ 3,000.00          |
| 10                    | Root/Grease Removal in Existing 15"-21" Sewer Line              | 2,000    | LF        | \$ 0.50     | \$ 1,000.00          | \$ 5.25      | \$ 10,500.00         | \$ 1.50      | \$ 3,000.00          | \$ 1.00     | \$ 2,000.00          |
| 11                    | Remove Protruding Service                                       | 1        | EA        | \$ 162.35   | \$ 162.35            | \$ 500.00    | \$ 500.00            | \$ 1,000.00  | \$ 1,000.00          | \$ 600.00   | \$ 600.00            |
| 12                    | Removal of Stabilized Debris in Manholes                        | 1        | EA        | \$ 324.70   | \$ 324.70            | \$ 300.00    | \$ 300.00            | \$ 410.00    | \$ 410.00            | \$ 950.00   | \$ 950.00            |
| 13                    | 6"-10" Sewer CCTV Inspection & Reporting                        | 23,000   | LF        | \$ 1.00     | \$ 23,000.00         | \$ 1.60      | \$ 36,800.00         | \$ 1.25      | \$ 28,750.00         | \$ 0.25     | \$ 5,750.00          |
| 14                    | 12"-15" Sewer CCTV Inspection & Reporting                       | 1,500    | LF        | \$ 2.00     | \$ 3,000.00          | \$ 1.70      | \$ 2,550.00          | \$ 0.40      | \$ 600.00            | \$ 0.25     | \$ 375.00            |
| 15                    | 18"-21" Sewer CCTV Inspection & Reporting                       | 1,500    | LF        | \$ 5.00     | \$ 7,500.00          | \$ 1.80      | \$ 2,700.00          | \$ 0.40      | \$ 600.00            | \$ 0.25     | \$ 375.00            |
| 16                    | Reverse Set Up                                                  | 1        | EA        | \$ 750.00   | \$ 750.00            | \$ 300.00    | \$ 300.00            | \$ 500.00    | \$ 500.00            | \$ 750.00   | \$ 750.00            |
| 17                    | Rehabilitation Recommendations Based on CCTV Inspection Results | 26,000   | LF        | \$ 0.25     | \$ 6,500.00          | \$ 0.20      | \$ 5,200.00          | \$ 0.10      | \$ 2,600.00          | \$ 0.10     | \$ 2,600.00          |
| 18                    | Collection System GIS Map Production                            | 26,000   | LF        | \$ 1.50     | \$ 39,000.00         | \$ 0.25      | \$ 6,500.00          | \$ 0.54      | \$ 14,040.00         | \$ 0.25     | \$ 6,500.00          |
| 19                    | Dyed Water Testing Concurrent with CCTV Inspection              | 1        | EA        | \$ 600.00   | \$ 600.00            | \$ 1,500.00  | \$ 1,500.00          | \$ 750.00    | \$ 750.00            | \$ 785.00   | \$ 785.00            |
| 20                    | Uncover Buried Manholes                                         | 1        | EA        | \$ 1,000.00 | \$ 1,000.00          | \$ 350.00    | \$ 350.00            | \$ 1,000.00  | \$ 1,000.00          | \$ 1,000.00 | \$ 1,000.00          |
| 21                    | Manhole Inspection & Reporting                                  | 140      | EA        | \$ 81.18    | \$ 11,365.20         | \$ 50.00     | \$ 7,000.00          | \$ 50.00     | \$ 7,000.00          | \$ 121.00   | \$ 16,940.00         |
| 22                    | Disposal of Solids                                              | 100      | CY        | \$ 95.00    | \$ 9,500.00          | \$ 150.00    | \$ 15,000.00         | \$ 76.00     | \$ 7,600.00          | \$ 1.00     | \$ 100.00            |
| 23                    | Flow Monitoring Data Collection (3 Meters)                      | 180      | Meter/Day | \$ 105.34   | \$ 18,961.20         | \$ 200.00    | \$ 36,000.00         | \$ 101.00    | \$ 18,180.00         | \$ 95.00    | \$ 17,100.00         |
| 24                    | Rainfall Monitoring (1 Gauge)                                   | 60       | Gauge/Day | \$ 82.67    | \$ 4,960.20          | \$ 50.00     | \$ 3,000.00          | \$ 60.00     | \$ 3,600.00          | \$ 56.00    | \$ 3,360.00          |
| 25                    | Additional Flow Monitoring Data Collection (3 Meters)           | 90       | Meter/Day | \$ 33.34    | \$ 3,000.60          | \$ 200.00    | \$ 18,000.00         | \$ 40.00     | \$ 3,600.00          | \$ 50.00    | \$ 4,500.00          |
| 26                    | Additional Rainfall Monitoring (1 Gauge)                        | 30       | Gauge/Day | \$ 22.67    | \$ 680.10            | \$ 50.00     | \$ 1,500.00          | \$ 29.00     | \$ 870.00            | \$ 75.00    | \$ 2,250.00          |
| <b>TOTAL BASE BID</b> |                                                                 |          |           |             | <b>\$ 203,804.35</b> |              | <b>\$ 232,825.00</b> |              | <b>\$ 175,000.00</b> |             | <b>\$ 146,340.00</b> |

I HAVE REVIEWED THESE BIDS AND HEREBY  
CERTIFY THAT THEY ARE ACCURATE

 11/21/2019

SARAH MCLELLAN, E.I., PROJECT MANAGER

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification.

# SUGGESTED FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

*Prepared by*

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly By



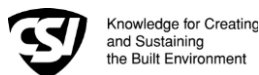
PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*a practice division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General Contractors of America



**EJCDC  
SUGGESTED FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR FOR  
CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between CITY OF GAUTIER

(Owner) and SUNCOAST INFRASTRUCTURE, INC.

(Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

**ARTICLE 1 - WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**OLD SPANISH TRAIL  
WASTEWATER SYSTEM UPGRADES  
GAUTIER, MISSISSIPPI**

**ARTICLE 2 - THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

The project consist of furnishing all labor, design, material, tools, equipment and layout in performing the sewer pipeline video inspection and installing, calibrating, and maintaining three flow meters and one rain gauge for a 60-day period to establish a flow rate in the sewer pipelines to assist in future sewer lift station sizing.

**ARTICLE 3 - ENGINEER**

3.01 The Project has been designed by

Seymour Engineering  
925 Tommy Munro Drive, Suite G  
Biloxi, MS 39532

(Engineer), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 Time of the Essence

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Days to Achieve Substantial Completion and Final Payment

- A. The Work will be substantially completed within 90 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 90 days after the date when the Contract Times commence to run.

**NINETY (90) CONSECUTIVE CALENDAR DAYS FOLLOWING THE “NOTICE TO PROCEED”**

4.03 Liquidated Damages - “LIQUIDATED DAMAGES IN THE SUM OF \$500.00 FOR EACH CONSECUTIVE CALENDAR DAY THEREAFTER SHALL BE ASSESSED.”

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$500.00 for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500.00 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

- A. For all Work other than Unit Price Work, a Lump Sum of:

|            |            |
|------------|------------|
| <u>N/A</u> | <u>N/A</u> |
| (words)    | (numerals) |

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.02 of the General Conditions.

- B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 5.01.B:

Estimated quantities in the Bid Documents are not guaranteed. It is the Contractor’s sole responsibility to perform the necessary field investigation and evaluation for determining the actual site conditions and projection of quantities as per details outlined within the plans and specifications. Additionally, there will be no increase in price or bid given to the Contractor due to ANY variation from the estimated quantities and actual quantities to complete the required work.

As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

| <u>UNIT PRICE WORK</u>                                                               |                               |             |                           |                   |  |                     |
|--------------------------------------------------------------------------------------|-------------------------------|-------------|---------------------------|-------------------|--|---------------------|
| <u>Item No.</u>                                                                      | <u>Description</u>            | <u>Unit</u> | <u>Estimated Quantity</u> | <u>Unit Price</u> |  | <u>Estimated</u>    |
|                                                                                      | (SEE ATTACHED)                |             |                           |                   |  |                     |
|                                                                                      |                               |             |                           |                   |  |                     |
|                                                                                      |                               |             |                           |                   |  |                     |
|                                                                                      |                               |             |                           |                   |  |                     |
|                                                                                      |                               |             |                           |                   |  |                     |
|                                                                                      |                               |             |                           |                   |  |                     |
|                                                                                      |                               |             |                           |                   |  |                     |
| <b>ONE HUNDRED FORTY-SIX THOUSAND AND THREE HUNDRED FORTY DOLLARS AND ZERO CENTS</b> |                               |             |                           |                   |  | <b>\$146,340.00</b> |
|                                                                                      | TOTAL OF ALL ESTIMATED PRICES | (words)     |                           |                   |  | (numerals)          |

C. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

## ARTICLE 6 - PAYMENT PROCEDURES

### 6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 Progress Payments; Retainage

A. Provided that an Application for Payment is received by the Engineer not later than the 20th day of a month, the Owner shall make payment to the Contractor not later than 45 days. If an application for Payment is received by the Engineer after the application date fixed above, payment shall be made by the Owner not later than 60 days after the Engineer receives the Application for Payment. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:

a. 90% percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95% percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

### 6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

## ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 0 percent per annum.

## ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.
- E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- K. The Contractor will name **Seymour Engineering** and the **City of Gautier** as additional insured on all general liability insurance provided by this Contractor to complete the scope of work in this Agreement. Contractor shall provide a Waiver of Subrogation to **Seymour Engineering** and the **City of Gautier** in respect to workers compensation.
- L. The Contractor has no current litigation with the Owner.

## ARTICLE 9 - CONTRACT DOCUMENTS

### 9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 8, inclusive).
2. Performance bond (pages 1 to 3, inclusive).
3. Payment bond (pages 1 to 3, inclusive).
4. Other bonds (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - a. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - b. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - c. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
5. General Conditions (pages 1 to 44, inclusive).
6. Supplementary Conditions (pages 1 to 14, inclusive).
7. Specifications as listed in the table of contents of the Project Manual.
8. MDEQ Required Attachments (pages 1 to 76, inclusive).
9. Drawings consisting of 1 sheet with each sheet bearing the following general title: **Old Spanish Trail, Wastewater System Upgrades** [or] the Drawings listed on attached sheet index.
10. Addenda (numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive).
11. Exhibits to this Agreement (enumerated as follows):
  - a. Contractor's Bid (pages 1 to ##, inclusive).
  - b. Documentation submitted by Contractor prior to Notice of Award (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - c. \_\_\_\_\_.
12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a. Notice to Proceed (pages 1 to 1, inclusive).
  - b. Work Change Directives.
  - c. Change Order(s).

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## ARTICLE 10 - MISCELLANEOUS

### 10.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### 10.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 10.03 Successors and Assigns

A. Owner to the extent allowed by law and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 10.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 10.05 Other Provisions

A. Construction will not be performed under this contract, as Davis Bacon wage requirements will apply to all construction contracts under this project.



IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on December 3, 2019 (which is the Effective Date of the Agreement).

OWNER:

**THE CITY OF GAUTIER, MISSISSIPPI**

By: \_\_\_\_\_

Title: **CITY MANAGER**

[CORPORATE SEAL]

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

**THE CITY OF GAUTIER, MISSISSIPPI**

**3330 HIGHWAY 90**

**GAUTIER, MISSISSIPPI 39553**

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

CONTRACTOR:

**SUNCOAST INFRASTRUCTURE, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

[CORPORATE SEAL]

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

**SUNCOAST INFRASTRUCTURE, INC.**

**P.O. BOX 397**

**FLORENCE, MS 39073**

License No.: **12019-MC**  
(Where applicable)

Agent for service or process: \_\_\_\_\_

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)



MISSISSIPPI DEPARTMENT OF  
ENVIRONMENTAL QUALITY

## **Required Attachments for RESTORE Direct Component Professional Services Contracts**

*Non-State Agencies – Template version 08.15.2019*

The “Required Attachments for RESTORE Direct Component Professional Services Contracts” is not intended to represent all requirements and obligations that may be applicable to this contract. This contract is subject to the terms and conditions of the Sub-Award Agreement between the Mississippi Department of Environmental Quality (“MDEQ”) and the Project Owner (Subrecipient), the terms and conditions of the Federal Award from the U. S. Department of Treasury, including any Special Award Conditions, the Standard Sub-Award Terms and Conditions, the RESTORE Act Financial Assistance Standard Terms and Condition and Program-Specific Terms and Conditions under the “Direct Component,” as amended, the RESTORE Act, 33 USC § 1321(t) et seq., the U.S. Department of Treasury Regulations governing the RESTORE Act, 31 CFR § 34 et seq., all applicable terms and conditions in 2 CFR Part 200 of the Office of Management and Budget (“OMB”) Uniform Guidance for Grants and Cooperative Agreements, as amended, including Appendix II to 2 CFR Part 200, and all other OMB circulars, executive orders or other federal laws or regulations applicable to the services provided under this contract. All of these terms and conditions apply to the Subrecipient and its Contractors, as well as any covered subcontractors or vendors.

Requirements applicable to this contract, as well as any covered subcontracts or vendors, include, but are not limited to:

- CERTIFICATIONS RELATED TO RESTORE ACT DIRECT COMPONENT FUNDING
- FEDERAL SPECIAL AWARD CONDITIONS
- RESTORE ACT FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS AND PROGRAM-SPECIFIC TERMS AND CONDITIONS
- MDEQ STANDARD SUB-AWARD TERMS AND CONDITIONS
- APPENDIX II TO 2 CFR PART 200: CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS
- PROCUREMENT OF RECOVERED MATERIALS
- CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS
- SAMPLE LETTER FROM CONTRACTOR TO MBE/WBE FIRMS
- MISSISSIPPI EMPLOYMENT PROTECTION ACT OF 2008 (Miss. Code Annotated §§71-11-1, et seq.)
- EXAMPLE OF E-VERIFY CERTIFICATION LETTER
- SUBCONTRACTOR LISTING FORM

## **CERTIFICATIONS RELATED TO RESTORE ACT DIRECT COMPONENT FUNDING**

---

**By entering into this contract, the contractor expressly acknowledges that:**

- 1) This project is funded in whole or in part with grant funding from the Department of Treasury and the Mississippi Department of Environmental Quality under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act);
- 2) Any contract awarded will be subject to the terms and conditions of said funding award, the RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions, the Standard Sub-Award Terms and Conditions, the RESTORE Act, 33 USC 1321(t), Treasury Regulations 31 CFR § 34 et seq., including 31 CFR §§ 34, Subpart D, all applicable terms and conditions in 2 CFR Part 200 (including Appendix II to Part 200), and all other OMB circulars, executive orders or other federal laws or regulations, as applicable.;
- 3) Any contract awarded will be subject to 31 CFR Part 19 – Governmentwide Debarment and Suspension (Nonprocurement); and,
- 4) Any contract awarded is subject to Treasury Title VI regulations, 31 CFR Part 22, for the implementation of Title VI of the Civil Rights Act of 1964, as amended (42 USC 2000d, et seq.).
- 5) Any contract awarded will be subject to the laws and regulations of the United States and the State of Mississippi.

**The owner will not enter into a contract with a contractor, or the contractor's principals, if the contractor or its principals appear on the federal government's Excluded Parties List. The contractor does hereby certify, by entering into this agreement, that neither it nor its principals are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.**

**The contractor must verify that any subcontractor (or the subcontractor's principals) does not appear on the federal government's Excluded Parties List prior to executing a subcontract with that entity. The Excluded Parties List is accessible at <http://www.sam.gov>.**

## **FEDERAL SPECIAL AWARD CONDITIONS**

---

The following Special Award Conditions apply to this contract, in addition to all other terms and conditions of the contract, and are not intended to supersede any other section of the contract, unless affirmatively stated:

**NOT APPLICABLE**

## **RESTORE ACT**

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### **FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS AND PROGRAM-SPECIFIC TERMS AND CONDITION**

# **RESTORE ACT**

## **FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS AND PROGRAM-SPECIFIC TERMS AND CONDITIONS**

**U.S. Department of the Treasury**

**August 2017**



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# RESTORE ACT FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS AND PROGRAM-SPECIFIC TERMS AND CONDITIONS

## PREFACE

The grant agreement is comprised of the following documents:

1. A Notice of Award from the Department of the Treasury ("Treasury");
2. The RESTORE Act Financial Assistance Standard Terms and Conditions ("Standard Terms and Conditions");
3. The RESTORE Act Financial Assistance Program-Specific Terms and Conditions ("Program-Specific Terms and Conditions");
4. The approved application, including all documents, certifications, and assurances that are part of the approved application;
5. The approved scope of work;
6. The approved budget; and,
7. Any special terms and conditions applied by Treasury to the award ("Special Award Conditions").

The recipient must comply, and require each of its subrecipients, contractors, and subcontractors employed in the completion of the activity, project, or program to comply with all federal statutes, federal regulations, executive orders (EOs), Office of Management and Budget (OMB) circulars, Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions of this federal financial assistance award ("Award"), as applicable, in addition to the certifications and assurances required at the time of application. This Award is subject to the laws and regulations of the United States.

Any inconsistency or conflict in Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions of this Award will be resolved according to the following order of precedence: federal laws, federal regulations, applicable notices published in the Federal Register, EOs, OMB circulars, Treasury's Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions. Special Award Conditions may amend or take precedence over Standard Terms and Conditions and Program-Specific Terms and Conditions.

Some of these Standard Terms and Conditions contain, by reference or substance, a summary of pertinent federal statutes, federal regulations published in the Federal Register (Fed. Reg.) or Code of Federal Regulations (C.F.R.), EOs, or OMB circulars. In particular, these Standard Terms and Conditions incorporate many of the provisions contained in OMB's Uniform Guidance for Grants and Cooperative Agreements (2 C.F.R. Part 200), which supersedes former OMB Circular A-102 (the former grants management common rule), OMB Circular A-133 (single audit requirements), and all former OMB circulars containing the cost principles for grants and cooperative agreements. To the extent that it is a summary, such a provision is not in derogation of, or an amendment to, any such statute, regulation, EO, or OMB circular. Unless a definition is provided here, definitions can be found in the RESTORE Act (Public Law No. 112-141 (July 6, 2012)), Treasury's RESTORE Act regulations (79 Fed. Reg. 48039 (Aug. 15, 2014) and 79 Fed. Reg. 61236 (Oct. 10, 2014), codified at 31 C.F.R. Part 34)), and/or 2 C.F.R. Part 200.

**A PROGRAM-SPECIFIC TERMS AND CONDITIONS - AWARDS UNDER THE DIRECT COMPONENT**

In addition to all the Standard Terms and Conditions described in Sections C through V of this document, all Treasury RESTORE Act awards made under the Direct Component include the following Program-Specific Terms and Conditions in this Section A:

**1. Administrative Costs**

- a. Administrative costs are defined at 31 C.F.R. § 34.2.
- b. Under no circumstances may the recipient use more than three percent of the Award funds received for administrative costs. Administrative costs do not include indirect costs that are identified specifically with, or readily assignable to facilities, as defined in 2 C.F.R. § 200.414. Costs borne by subrecipients do not count toward the three percent cap.
- c. Up to 100 percent of program income may be used to pay for allowable administrative costs, subject to the three percent cap.

**2. Oil Spill Liability Trust Fund**

The recipient must not seek any compensation for the approved program or project from the Oil Spill Liability Trust Fund. If the recipient is authorized to make subawards, the recipient must not use Direct Component funds to make subawards to fund activities for which any claim for compensation was filed and paid out by the Oil Spill Liability Trust Fund after July 6, 2012.

**3. Remedies for Noncompliance**

- a. If Treasury determines that the recipient has expended Direct Component funds to cover the cost of any ineligible activities, in addition to the remedies available in Section M of these Standard Terms and Conditions, per 31 C.F.R. § 34.804, Treasury will make no additional payments to the recipient from the Gulf Coast Restoration Trust Fund (Trust Fund), including no payments from the Trust Fund for activities, projects, or programs other than Direct Component activities, projects, or programs, until the recipient has either (1) deposited an amount equal to the amount expended for the ineligible activities in the Trust Fund, or (2) Treasury has authorized the recipient to expend an equal amount from the recipient's own funds for an activity that meets the requirements of the RESTORE Act.
- b. If Treasury determines the recipient has materially violated the terms of this Award, Treasury will make no additional funds available to the recipient from any part of the Trust Fund until the recipient corrects the violation.

## **B PROGRAM-SPECIFIC TERMS AND CONDITIONS - AWARDS UNDER THE CENTERS OF EXCELLENCE RESEARCH GRANTS PROGRAM**

In addition to all the Standard Terms and Conditions described in Sections C through V of this document, all Treasury RESTORE Act awards under the Centers of Excellence Research Grants Program include the following Program-Specific Terms and Conditions in this Section B:

### **1. Allowable Costs**

In addition to the prohibitions contained in 2 C.F.R. Part 200, Subpart E (*Cost Principles*), the following costs are unallowable unless approved in writing by Treasury:

- a. Construction, including the alteration, repair, or rehabilitation of existing structures. Facilities costs are allowable as indirect costs in a federally approved negotiated indirect cost rate.
- b. Acquisition of land or interests in land.

### **2. Notifications**

- a. If the selection of a Center or Centers of Excellence occurs after the start date of this Award, the recipient must promptly inform Treasury of the following:
  - i. Name of the Center of Excellence and the entity selected to administer it, including the names of member organizations if the entity is a consortium;
  - ii. The DUNS Number of the entity;
  - iii. Location of the entity;
  - iv. Discipline or disciplines assigned to the Center of Excellence;
  - v. Description of the actual public input process undertaken, including a summary of any comments received and a description of how they were addressed; and
  - vi. The estimated budget for the Center, including the total allocation of funded dollars for the Center.
- b. The recipient must immediately notify Treasury if it anticipates selecting a new entity or consortium to serve as a Center of Excellence, or making other changes to the initial selection of Center(s) of Excellence described in the scope of work.

### **3. Performance Reports**

In addition to the reporting requirements in Section D, the recipient must submit an annual report to the Gulf Coast Ecosystem Restoration Council ("Council"), in a form prescribed by the Council that includes information on subrecipients, subaward amounts, disciplines addressed, and any other information required by the Council. When the subrecipient is a consortium, the annual report must also identify the consortium members. The recipient must provide a copy of this report to Treasury when it submits the report to the Council.

## STANDARD TERMS AND CONDITIONS

### AWARDS UNDER THE DIRECT COMPONENT AND THE CENTERS OF EXCELLENCE RESEARCH GRANTS PROGRAM

#### C FINANCIAL REQUIREMENTS

##### 1. Applicable Regulations

This Award is subject to the following federal regulations and requirements. This list is not exclusive:

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, Subparts A through F, and any Treasury regulations incorporating these requirements.
- b. Treasury's RESTORE Act regulations, 31 C.F.R. Part 34.
- c. Governmentwide Debarment and Suspension, 31 C.F.R. Part 19.
- d. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- e. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- f. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170.
- g. Award Term related to Trafficking in Persons, 2 C.F.R. Part 175.

##### 2. Scope of Work

The recipient must only use funds obligated and disbursed under this Award for the purpose of carrying out activities described in the attached approved scope of work. The recipient must not incur or pay any expenses under this Award for activities not related to the attached approved scope of work unless Treasury first approves an Award amendment explicitly modifying the approved scope of work to include those activities.

##### 3. Period of Performance: Pre-award Costs

The recipient must use funds obligated and disbursed under this Award only during the period of performance specified in the Notice of Award, which is the time period during which the recipient may incur new obligations and costs to carry out the work authorized under this Award. The only exception is for costs incurred prior to the effective date of this Award, which are allowable only if:

- a. Treasury specifically authorized these costs in writing on or after the issuance date of this Award;
- b. Incurring these costs was necessary for the efficient and timely performance of the scope of work; and
- c. These costs would have been allowable if incurred after the date of the award.

##### 4. Indirect Costs

- a. The recipient may only charge indirect costs to this Award if these costs are allowable under 2 C.F.R. Part 200, subpart E (*Cost Principles*).

- b. Indirect costs charged must be consistent with an accepted de minimis rate or the indirect cost rate agreement negotiated between the recipient and its cognizant agency (defined as the federal agency that is responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, see 2 C.F.R. § 200.19) and must be included in the recipient's budget.
- c. Unallowable direct costs are not recoverable as indirect costs.
- d. The maximum dollar amount of allocable indirect costs charged to this Award shall be the lesser of:
  - i. The line item amount for the indirect costs contained in the approved budget, including all budget revisions approved in writing by the Treasury; or,
  - ii. The total indirect costs allocable to this Award based on the indirect cost rate approved by a cognizant or oversight federal agency and applicable to the period in which the cost was incurred, provided that the rate is approved on or before the Award end date.

#### **5. Cost Sharing and Budget Limitations**

- a. The recipient is not required to contribute any matching funds.
- b. The recipient shall not request or receive additional funding beyond what was included in the approved application for the attached approved scope of work from any federal or non-federal source without first notifying Treasury.

#### **6. Program Income**

Any program income (defined at 2 C.F.R. § 200.80) generated by the recipient or the subrecipient during the period of performance of the award or subrecipient agreement, as applicable, must be included in the approved budget and be used for the purposes and under the conditions of these Standard Terms and Conditions and any Special Award Conditions, i.e. solely to accomplish the approved scope of work.

#### **7. Incurring Costs or Obligating Federal Funds Beyond the Expiration Date**

The recipient must not incur costs or obligate funds under this Award for any purpose pertaining to the operation of the activity, project, or program beyond the end of the period of performance. The only costs which are authorized for a period up to 90 days following the end of the period of performance are those strictly associated with close-out activities. Close-out activities are normally limited to the preparation of final progress, financial, and required audit reports unless otherwise approved in writing by Treasury. Under extraordinary circumstances, and at Treasury's sole discretion, Treasury may approve the recipient's request for an extension of the 90-day closeout period.

#### **8. Tax Refunds**

Refunds of taxes paid under the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA) that are received by the recipient during or after the period of performance must be refunded or credited to Treasury if these taxes were paid out of RESTORE Act funds in accordance with 2 C.F.R. Part 200, subpart E (*Cost Principles*). The recipient agrees to contact Treasury immediately upon receipt of these refunds.

## 9. Subawards

- a. If the recipient is permitted to make subawards under this award, the recipient must execute a legally binding written agreement with the subrecipient. This agreement must incorporate all the terms and conditions of this Award, including any Special Award Conditions, and must include the information at 2 C.F.R. § 200.331. The recipient must perform all responsibilities required of a pass-through entity, as specified in 2 C.F.R. Part 200.
- b. The recipient must evaluate and document each subrecipient's risk of noncompliance with federal statutes, federal regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring strategy, as described in 2 C.F.R. § 200.331(b).
- c. The recipient must monitor the subrecipient's use of federal funds through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient is administering the subaward in compliance with the RESTORE Act, Treasury's RESTORE Act regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions, and to ensure that performance goals are achieved.
- d. The recipient must provide training and technical assistance to the subrecipient as necessary.
- e. The recipient must, if necessary, take appropriate enforcement actions against non-compliant subrecipients.
- f. If lower tier subawards are authorized by Treasury, the recipient must ensure that a subrecipient who makes a subaward applies the terms and conditions of this Award, including any Special Award Conditions, to all lower tier subawards, and that a subrecipient who makes a subaward carries out all the responsibilities of a pass-through entity described at 2 C.F.R. Part 200.
- g. The recipient must maintain written standards of conduct governing the performance of its employees involved in executing this Award and administration of subawards.
  - i. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward.
  - ii. The officers, employees, and agents of the recipient shall neither solicit nor accept anything of monetary value from subrecipients.
  - iii. A recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward.
  - iv. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

## **D RECIPIENT REPORTING AND AUDIT REQUIREMENTS**

### **1. Financial Reports**

- a. The recipient must submit a "Federal Financial Report" (SF-425) on a semi-annual basis for the periods ending March 31 and September 30 (or June 30 and December 31, if instructed by Treasury), or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period. A final SF-425 must be submitted within 90 days after the end of the period of performance.
- b. In the remarks section of each SF-425 submitted, the recipient must describe by budget category the use of all funds received.
- c. The report must be signed by an authorized certifying official who is the employee authorized by the recipient organization to submit financial data on its behalf.
- d. The recipient must submit all financial reports via <http://www.GrantSolutions.gov>, unless otherwise specified by Treasury in writing.

### **2. Performance Reports**

- a. The recipient must submit an SF-PPR ("Performance Progress Report"), a "RESTORE Act Status of Performance Report," (standard format provided by Treasury, OMB Approval No. 1505-0250) and an updated "RESTORE Act Milestones Report," (standard format provided by Treasury, OMB Approval No. 1505-0250) on a semi-annual basis for the periods ending March 31 and September 30 (or June 30 and December 31, if instructed by Treasury), or any portion thereof, unless otherwise specified in a Special Award Condition. Reports are due no later than 30 days following the end of each reporting period, except the final report, which is due 90 days following the end of the period of performance.
- b. The recipient must submit all performance reports in (a) above, via <http://www.GrantSolutions.gov>, unless otherwise specified in writing by Treasury, and the recipient must complete these reports according to the following instructions:
  - i. SF-PPR: In the "performance narrative" attachment (section B of the SF-PPR), the recipient must provide the following information:
    - a) In Section B-1:
      - 1) Summarize activities undertaken during the reporting period;
      - 2) Summarize any key accomplishments, including milestones completed for the reporting period;
      - 3) List any contracts awarded during the reporting period, along with the name of the contractor and its principal, the DUNS number of the contractor, the value of the contract, the date of award, a brief description of the services to be provided, and whether or not local preference was used in the selection of the contractor; and
      - 4) If the recipient is authorized to make subawards, list any subawards executed during the reporting period, along with the name of the entity and its principal, the DUNS number of the entity, the value of the agreement, the date of award, and a brief



description of the scope of work.

b) In Section B-2:

- 1) Indicate if any operational, legal, regulatory, budgetary, and/or ecological risks, and/or any public controversies, have been materialized. If so, indicate what mitigation strategies have been undertaken to attenuate these risks or controversies; and
- 2) Summarize any challenges that have impeded the recipient's ability to accomplish the approved scope of work on schedule and on budget.

c) In Section B-3:

Summarize any significant findings or events, including any data compiled, collected, or created, if applicable.

d) In Section B-4:

Describe any activities to disseminate or publicize results of the activity, project, or program, including data and its repository and citations for publications resulting from this Award.

e) In Section B-5:

- 1) Describe all efforts taken to monitor contractor and/or subrecipient performance, including site visits, during the reporting period.
- 2) For subawards, indicate whether the subrecipient submitted an audit to the recipient, and if so, whether the recipient issued a management decision on any findings; and
- 3) Describe any other activities or relevant information not already provided.

f) In Section B-6:

Summarize the activities planned for the next reporting period.

ii. "RESTORE Act Status of Performance Report": Instructions are provided on the report form.

iii. "RESTORE Act Milestones Report": Instructions are provided on the report form.

**3. Interim Reporting on Significant Developments per 2 C.F.R. § 200.328(d)**

- a. Events may occur between the scheduled performance reporting dates that have significant impact upon the activity, project, or program. In such cases, the recipient must inform Treasury as soon as the following types of conditions become known:
  - i. Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of this Award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
  - ii. Favorable developments, which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.



- b. The recipient must:
  - i. Promptly provide to Treasury and the Treasury Inspector General a copy of all state or local inspector general reports, audit reports other than those prepared under the Single Audit Act, and reports of any other oversight body, if such report pertains to an award under any RESTORE Act component, including the Comprehensive Plan Component and Spill Impact Component.
  - ii. Immediately notify Treasury and the Treasury Inspector General of any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds.
  - iii. Promptly notify Treasury upon the selection of a contractor or subrecipient performing work under this Award, and include the name and DUNS number for the subrecipient or contractor, and the total amount of the contract or subaward.

#### **4. Audit Requirements**

The recipient is responsible for complying, and ensuring all subrecipients comply, with all audit requirements of the Single Audit Act and 2 C.F.R. Part 200 Subpart F – Audit Requirements.

#### **5. Operational Self-Assessment**

The recipient must submit a revised *Operational Self-Assessment* form no later than June 30th of each calendar year for the duration of this Award. Only one *Operational Self-Assessment* must be submitted per recipient per year. In completing the form, the recipient must note controls or activities that have changed from its previous submission. The recipient must submit the *Operational Self-Assessment* electronically to [restoreact@treasury.gov](mailto:restoreact@treasury.gov), unless otherwise specified in writing by Treasury. The form may be downloaded at <https://www.treasury.gov/services/restore-act/Pages/Direct%20Component/DirectComponent.aspx>.

### **E FINANCIAL MANAGEMENT SYSTEM AND INTERNAL CONTROL REQUIREMENTS**

1. Recipients that are states must expend and account for Award funds in accordance with the applicable state laws and procedures for expending and accounting for the state's own funds. All other recipients must expend and account for Award funds in accordance with federal laws and procedures. In addition, all recipients' financial management systems must be sufficient to:
  - a. Permit the preparation of accurate, current, and complete SF-425, SF-PPR, RESTORE Act Milestones Report, and RESTORE Act Status of Performance Reports, as well as reporting on subawards, if applicable, and any additional reports required by any Special Award Conditions;
  - b. Permit the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with all applicable federal, state, and local requirements, including the RESTORE Act, Treasury RESTORE Act regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions.
  - c. Allow for the comparison of actual expenditures with the amount budgeted for each Award made to the recipient by Treasury under the RESTORE Act.

- d. Identify and track all RESTORE Act awards received and expended by the assigned grant number, which is the Universal Award ID (as provided by Treasury), the year the Award was made, the awarding agency (Treasury), and the program's CFDA title and CFDA number (21.015).
  - e. Record the source and application of funds for all activities funded by this Award, as well as all awards, authorizations, obligations, unobligated balances, assets, expenditures, program income, and interest earned on federal advances, and allow users to tie these records to source documentation such as cancelled checks, paid bills, payroll and attendance records, contract and subaward agreements, etc.
  - f. Ensure effective control over, and accountability for, all federal funds, and all property and assets acquired with federal funds. The recipient must adequately safeguard all assets and ensure that they are used solely for authorized purposes.
2. The recipient must establish written procedures to implement the requirements set forth in section H below (Award Disbursement), as well as written procedures to determine the allowability of costs in accordance with 2 C.F.R. Part 200, subpart E (*Cost Principles*) and the terms and conditions of this Award.
  3. The recipient must establish and maintain effective internal controls over this Award in a manner that provides reasonable assurance that the recipient is managing this Award in compliance with the RESTORE Act, Treasury's RESTORE Act regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The recipient must evaluate and monitor its compliance, and the compliance of any subrecipients, with the RESTORE Act, Treasury's RESTORE Act regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions, and promptly remedy any identified instances of noncompliance. When and if an instance of noncompliance cannot be remedied by the recipient, the recipient must promptly report the instance of noncompliance to Treasury and the Treasury Inspector General, followed by submitting a proposed mitigation plan to Treasury.
  4. The recipient must take reasonable measures to safeguard protected personally identifiable information (PII) consistent with applicable federal, state, and local laws regarding privacy and obligations of confidentiality.

## **F RECORDS RETENTION REQUIREMENTS**

1. The recipient must retain all records pertinent to this Award for a period of three years, beginning on a date as described in 2 C.F.R. § 200.333. While electronic storage of records (backed up as appropriate) is preferable, the recipient has the option to store records in hardcopy (paper) format. For the purposes of this section, the term "records" includes but is not limited to:
  - a. Copies of all contracts and all documents related to a contract, including the Request for Proposal (RFP), all proposals/bids received, all meeting minutes or other documentation of the evaluation and selection of contractors, any disclosed conflicts of interest regarding a contract, all signed conflict of interest forms, all conflict of interest and other procurement rules governing a particular contract, and any bid protests;

- b. Copies of all subawards, including the funding opportunity announcement or equivalent, all applications received, all meeting minutes or other documentation of the evaluation and selection of subrecipients, any disclosed conflicts of interest regarding a subaward, and all signed conflict of interest forms);
  - c. All documentation of site visits, reports, audits, and other monitoring of contractors (vendors) and subrecipients);
  - d. All financial and accounting records, including records of disbursements to contractors (vendors) and subrecipients, and documentation of the allowability of Administrative Costs charged to this Award;
  - e. All supporting documentation for the performance outcome and other information reported on the recipient's SF-425s, SF-PPRs, RESTORE Act Milestones Reports, and RESTORE Act Status of Performance Reports; and
  - f. Any reports, publications, and data sets from any research conducted under this Award.
- 2. If any litigation, claim, investigation, or audit relating to this Award or an activity funded with Award funds is started before the expiration of the three 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.
  - 3. If the recipient is authorized to enter into contracts to complete the approved scope of work, the recipient must include in its legal agreement with the contractor a requirement that the contractor retain all records in compliance with 2 C.F.R. § 200.333.
  - 4. If the recipient is authorized to make subawards, the recipient must include in its legal agreement with the subrecipient a requirement that the subrecipient retain all records in compliance with 2 C.F.R. § 200.333.

## **G THE FEDERAL GOVERNMENT'S RIGHT TO INSPECT, AUDIT, AND INVESTIGATE**

### **1. Access to Records**

- a. Treasury, the Treasury Office of Inspector General, and the Government Accountability Office have the right of timely and unrestricted access to any documents, papers or other records, including electronic records, of the recipient that are pertinent to this Award, in order to make audits, investigations, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to the recipient's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are required to be retained.
- b. If the recipient is authorized to make subawards, the recipient must include in its legal agreement or contract with the subrecipient a requirement that the subrecipient make available to Treasury, the Treasury Office of Inspector General, and the Government Accountability Office any documents, papers or other records, including electronic records, of the subrecipient, that are pertinent to this Award, in order to make audits, investigations, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to the subrecipient's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are required to be retained (see Section F above).
- c. If the recipient is authorized to enter into contracts to complete the approved scope of work, the recipient must include in its contract a requirement that the

contractor make available to Treasury, the Treasury Office of Inspector General, and the Government Accountability Office any documents, papers or other records, including electronic records, of the contractor that are pertinent to this Award, in order to make audits, investigations, examinations, excerpts, transcripts, 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. This right of access shall continue as long as records are retained (see Section F above).

**2. Access to the Recipient's Sites.**

The Treasury, the Treasury Office of Inspector General, and Government Accountability Office shall have the right during normal business hours to conduct announced and unannounced onsite and offsite physical visits of recipients and their subrecipients and contractors corresponding to the duration of their records retention obligation for this Award.

**H AWARD DISBURSEMENT**

1. Unless otherwise specified in a Special Award Condition, Treasury will make advance payments under this Award. However, if one of the following occurs, Treasury will require Award funds to be disbursed on a reimbursement basis either with or without pre-approval of drawdown requests: (1) Treasury determines that the recipient does not meet the financial management system standards (see Section E) included in these Standard Terms and Conditions, (2) Treasury determines that the recipient has not established procedures that will minimize the time elapsing between the transfer of funds and disbursement, or (3) Treasury determines that the recipient is in noncompliance with the RESTORE Act, Treasury's RESTORE Act regulations, other pertinent federal statutes, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and/or any Special Award Conditions, and determines that the appropriate remedy is to require payment on a reimbursement basis.
2. If reimbursement is used, Treasury may require pre-approval of drawdown requests. If Treasury requires pre-approval of drawdown requests, Treasury will provide the recipient with instructions on what billing to submit. Treasury will make payment within 30 calendar days after receipt of the billing, unless Treasury determines the request to be improper, in which case payment will not be made.
3. To the extent available, the recipient must disburse funds available from program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments of Award funds.
4. Treasury will use the Department of Treasury's Automated Standard Application for Payment (ASAP) system to disburse payments of Award funds. In order to receive payments, the recipient must first enroll in ASAP.gov. Treasury creates and funds account(s) for recipients in ASAP.gov, and recipients access their account(s) online to request funds. All Award funds will be disbursed electronically using the Automated Clearing House (ACH) for next day or future day payments only. Awards paid through ASAP.gov may contain controls or withdrawal limits set by Treasury.
5. Requirements applicable to recipients that are states: Payment methods of state agencies or instrumentalities must be consistent with Treasury-State agreements under the Cash Management Improvement Act, 31 C.F.R. Part 205 "Rules and Procedures for Efficient Federal-State Funds Transfers," and Treasury Financial Manual (TFM) 4A-2000 Overall Disbursing Rules for All Federal Agencies.
6. Requirements applicable to recipients that are not states: The recipient must minimize

the time between the transfer of funds from Treasury and the use of the funds by the recipient. Advance payments to the recipient must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient in carrying out the purpose of the approved activity, project, or program. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the parish or county for activity, project, or program costs and the proportionate share of any allowable indirect costs. Advances should not be drawn down more than three business days before expenditure. Advanced funds not disbursed in a timely manner must be promptly returned to Treasury. The recipient must make timely payment to contractors (vendors) in accordance with the contract provisions.

7. Advances of federal funds must be deposited and maintained in United States Government-insured interest-bearing accounts whenever possible. The recipient is not required to maintain a separate depository account for receiving Award funds. If the recipient maintains a single depository account where advances are commingled with funds from other sources, the recipient must maintain on its books a separate subaccount for the Award funds. Consistent with the national goal of expanding opportunities for women-owned and minority-owned business enterprises, the recipient is encouraged to ensure fair consideration of women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).
8. The recipient must maintain advances of federal funds in interest bearing accounts, unless one of the following conditions applies:
  - a. The recipient receives less than \$120,000 in federal awards per year;
  - b. The best reasonably available interest bearing account would not be expected to earn interest in excess of \$500 per year on federal cash balances; or
  - c. The depository would require an average or minimum balance so high that it would not be feasible within the expected federal and non-federal cash resources.
9. On an annual basis, the recipient must remit interest earned on federal advance payments deposited in interest-bearing accounts to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to \$500 per year may be retained by the recipient and used for administrative costs.

## **I EFFECT OF A GOVERNMENT SHUTDOWN ON DISBURSEMENTS AND THE AVAILABILITY OF TREASURY PERSONNEL**

In the event of a federal government shutdown, Treasury will issue guidance to the recipient concerning the expected effects on this Award.

## **J NOTIFICATIONS AND PRIOR APPROVALS**

### **1. Notifications**

In addition to other notifications required under these Standard Terms and Conditions, the recipient must promptly notify Treasury in writing whenever any of the following is anticipated or occurs:

- a. A vacancy or change to key personnel listed in the application.
- b. Any termination of a subaward prior to the expiration of the agreement with the subrecipient.
- c. Except for changes described in (2) below, the recipient may revise the budget without prior approval. If the recipient alters the budget, the recipient must

provide a revised budget form (SF-424A or SF-424C, as applicable) to Treasury as an attachment to the SF-PPR, reflecting all budget revisions from the same period covered by the SF-PPR. Acceptance of such budget information does not constitute Treasury's approval of the revised budget.

## **2. Prior Approvals**

- a. The recipient must obtain prior written approval from Treasury whenever any of the following actions is anticipated:
  - i. A change in the scope or the objective of the activity, project, or program (even if there is no associated budget revision requiring prior written approval);
  - ii. A need to extend the period of performance;
  - iii. A need for additional federal funds to complete the activity, project, or program;
  - iv. The transfer of funds among direct cost categories or programs, functions, and activities if this Award exceeds the Simplified Acquisition Threshold (defined at 2 C.F.R. § 200.88) and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by Treasury;
  - v. The subawarding, transferring or contracting out of any work under this Award (this provision does not apply to the acquisition of supplies, material, equipment or general support services), unless described in the application and approved in this Award.;
  - vi. Any transfer between the non-construction and construction activities; and
  - vii. The inclusion of costs that require prior approval in accordance with 2 C.F.R. Part 200, Subpart E—Cost Principles, unless described in the application and approved in this Award.
- b. If requesting a no-cost extension to this Award, the request must be made no less than 30 days prior to the end of the period of performance for this Award. Any extension of the period of performance requires prior written approval from Treasury.

## **K PROPERTY**

### **1. General Requirements**

- a. The recipient must comply with the property standards at 2 C.F.R. § 200.310 through § 200.316 for real property, equipment, supplies, and intangible property. The recipient must also comply with the RESTORE Act requirements concerning the acquisition of land and interests in land at 31 C.F.R. § 34.803.
- b. No real property or interest in real property may be acquired under this Award unless authorized in the approved scope of work.

### **2. Supplies and Equipment**

- a. Requirements that are applicable to recipients that are states:
  - i. Equipment: The recipient must use, manage, and dispose of equipment acquired under this Award in accordance with state laws and



procedures.

- ii. Supplies: If the recipient has a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the activity, project, or program and the supplies are not needed for any other federal award, the recipient must report the value and the retention or sale of such supplies by submitting to Treasury a completed *SF-428 Tangible Personal Property Report* and *SF-428-B Final Report Form* no later than 60 days after the end of the Period of Performance.

b. Requirements that are applicable to recipients that are not states:

- i. Equipment and Supplies: During the period of performance, the recipient must seek disposition instructions from Treasury for equipment and/or unused or residual supplies acquired under this Award if the current fair market value of the equipment and/or unused or residual supplies is greater than \$5,000 per unit. The recipient must seek disposition instructions before disposing of the property by submitting a completed *SF-428 Tangible Personal Property Report* and *SF-428-C Disposition Request/Report*. Not later than 60 days after the end of the period of performance, the recipient must submit to Treasury a completed *SF-428 Tangible Personal Property Report* and *SF-428-B Final Report Form* if the recipient retains any equipment with a current fair market value greater than \$5,000 per unit or a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the activity, project, or program and the equipment and/or supplies are not needed for any other federal award.

## **L AMENDMENTS AND CLOSEOUT**

### **1. Amendments**

- a. The terms of this Award may be amended with the written approval of the recipient and Treasury.
- b. Treasury reserves the right to amend the terms of this Award if required by federal law or regulation.
- c. Amendments must be requested in writing, and must include an explanation for the reason this Award should be amended.

### **2. Closeout**

- a. Treasury will close out this Award when it determines that all applicable administrative actions and all required work of this Award have been completed.  
  
Within 90 calendar days after the end of the period of performance, the recipient must submit any outstanding SF-PPR and RESTORE Act Status of Performance reports, as well as the required reporting on subawards, if applicable, plus a final SF-425 report, unless the recipient requests, and Treasury approves, an extension.
- b. The recipient must liquidate all obligations incurred under this Award not later than 90 calendar days after the end of the period of performance, unless the recipient requests, and Treasury approves, an extension.
- c. The recipient must promptly refund any balances of unobligated cash that

Treasury paid.

- d. Within 90 days after receipt of reports in paragraph (a) of this section, Treasury will make upward or downward adjustments to the allowable costs, and then make prompt payment to the recipient for allowable, unreimbursed costs.
- f. The closeout of this Award does not affect any of the following:
  - i. The right of Treasury to disallow costs and recover funds on the basis of a later audit or other review;
  - ii. The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments;
  - iii. The recipient's obligations regarding audits, property management and disposition (if applicable), and records retention.

## **M REMEDIES FOR NONCOMPLIANCE**

1. If Treasury determines that the recipient has failed to comply with the RESTORE Act, Treasury's RESTORE Act regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, or any Special Award Conditions, Treasury may take any of the following actions (in addition to the remedies in Section A.3, above, applicable to Direct Component awards):
  - a. Impose additional Special Award Conditions such as:
    - i. Allowing payment only on a reimbursement basis, with pre-approval of drawdown requests,
    - ii. Requiring additional reporting or more frequent submission of the SF-425, SF-PPR, or RESTORE Act Status of Performance Report,
    - iii. Requiring additional activity, project, or program monitoring,
    - iv. Requiring the recipient or one or more of its subrecipients to obtain technical or management assistance, and/or
    - v. Establishing additional actions that require prior approval;
  - b. Temporarily withhold payments pending correction of the noncompliance;
  - c. Disallow from funding from this Award all or part of the cost of the activity or action not in compliance;
  - d. Wholly or partly suspend or terminate this Award;
  - e. Withhold additional Awards; and/or
  - f. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180.

Treasury will notify the recipient in writing of Treasury's proposed determination that an instance of noncompliance has occurred, provide details regarding the instance of noncompliance, and indicate the remedy that Treasury proposes to pursue. The recipient will have 30 calendar days to respond and provide information and documentation contesting Treasury's proposed determination or suggesting an alternative remedy. Treasury will consider any and all information provided by the recipient and issue a final determination in writing, which will state Treasury's final findings regarding noncompliance and the remedy to be imposed.

2. In extraordinary circumstances, Treasury may require that any of the remedies above take effect immediately upon notice in writing to the recipient. In such cases, the recipient may contest Treasury's determination or suggest an alternative remedy in writing to



Treasury, and Treasury will issue a final determination.

3. Instead of, or in addition to, the remedies listed above, Treasury may refer the noncompliance to the Treasury Office of Inspector General for investigation or audit. Treasury will refer all allegations of fraud, waste, or abuse to the Treasury Inspector General.
4. Treasury may terminate this Award in accordance with 2 C.F.R. § 200.339. Requests for termination by the recipient must also be in accordance with 2 C.F.R. § 200.339. Such requests must be in writing and must include the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. If Treasury determines that the remaining portion of this Award will not accomplish the purpose of this Award, Treasury may terminate this Award in its entirety.
5. If this Award is terminated, Treasury will update or notify any relevant government-wide systems or entities of any indications of poor performance as required by 41 U.S.C. § 417b and 31 U.S.C. § 3321 and implementing guidance at 2 C.F.R. Part 180.
6. Costs that result from obligations incurred by the recipient during a suspension or after termination are not allowable unless Treasury expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if: (1) the costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, and are not in anticipation of it; and (2) the costs would be allowable if the Award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

## **N DEBTS**

### **1. Payment of Debts Owed the Federal Government**

- a. Any funds paid to the recipient in excess of the amount to which the recipient is finally determined to be authorized to retain under the terms of this Award constitute a debt to the federal government.
- b. Any debts determined to be owed the federal government must be paid promptly by the recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made. Interest, penalties, and administrative charges (see paragraphs c, d, and e below) shall be charged on delinquent debts in accordance with 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Treasury will refer any debt that is more than 180 days delinquent to Treasury's Bureau of the Fiscal Service for debt collection services.
- c. The minimum annual interest rate to be assessed on any debts is the Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at [https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr\\_home.htm](https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm). The assessed rate shall remain fixed for the duration of the indebtedness, based on the beginning date in Treasury's written demand for payment.
- d. Penalties on any debts shall accrue at a rate of not more than 6 percent per year or such other higher rate as authorized by law.
- e. Administrative charges, that is, the costs of processing and handling a delinquent debt, shall be determined by Treasury.
- f. Funds for payment of a debt must not come from other federally sponsored programs. Verification that other federal funds have not been used will be made, e.g., during on-site visits and audits.

## **2. Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs**

Pursuant to 28 U.S.C. § 3201(e), unless waived in writing by Treasury, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the federal government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

## **O NON-DISCRIMINATION REQUIREMENTS**

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. The recipient is required to comply with all non-discrimination requirements summarized in this section, and to ensure that all subawards and contracts contain these nondiscrimination requirements.

### **1. Statutory Provisions**

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) prohibits discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;
- b. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.) prohibits discrimination on the basis of sex under federally assisted education programs or activities;
- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) prohibits discrimination on the basis of handicap under any program or activity receiving or benefitting from federal assistance;
- d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance;
- e. The Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.) ("ADA"), including the ADA Amendments Act of 2008 (Public Law 110-325, ("ADAAA"), prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- f. Any other applicable non-discrimination law(s).

### **2. Regulatory Provisions**

- a. Treasury Title VI regulations, 31 C.F.R. Part 22, implement Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000d, et seq.) which prohibits discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;
- b. Treasury Title IX regulations, 31 Part 28, implement Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.) which prohibits discrimination on the basis of sex under federally assisted education programs or activities.

### **3. Other Provisions**

- a. Parts II and III of EO 11246 (30 Fed. Reg. 12319, 1965), "Equal Employment Opportunity," as amended by EO 11375 (32 Fed. Reg. 14303, 1967) and 12086 (43 Fed. Reg. 46501, 1978), require federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of EO 11246 and Department of Labor regulations implementing EO 11246 (41 C.F.R. § 60-1.4(b), 1991).
- b. EO 13166 (August 11, 2000), "Improving Access to Services for Persons With Limited English Proficiency," requires federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them.

### **4. Title VII Exemption for Religious Organizations**

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

### **5. Protections for Whistleblowers**

In accordance with 41 U.S.C. § 4712, neither the recipient nor any of its subrecipients, contractors (vendors), or subcontractors may discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing information to a person or entity listed below that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant:

- a. A Member of Congress or a representative of a committee of Congress;
- b. An Inspector General;
- c. The Government Accountability Office;
- d. A Treasury employee responsible for contract or grant oversight or management;
- e. An authorized official of the Department of Justice or other law enforcement agency;
- f. A court or grand jury; and/or
- g. A management official or other employee of the recipient, subrecipient, vendor, contractor (vendor), or subcontractor who has the responsibility to investigate, discover, or address misconduct.

**P REQUIREMENT TO CHECK DEBARMENT AND SUSPENSION STATUS OF SUBRECIPIENTS, CONTRACTORS, SUBCONTRACTORS AND VENDORS**

1. Recipients that are authorized to enter into subawards or contracts to accomplish all or a portion of the approved scope of work must verify that a proposed subrecipient or contractor (if the contract is expected to equal or exceed \$25,000) or its principals, does not appear on the federal government's Excluded Parties List prior to executing an agreement or contract with that entity. Recipients may not enter into a subaward or contract with an entity that appears on the Excluded Parties List. The Excluded Parties List is accessible at <http://www.sam.gov>.
2. The recipient must ensure that any agreements or contracts with subrecipients or contractors (vendors) require that they verify that their contractors (for contracts expected to equal or exceed \$25,000), subcontractors (for subcontracts expected to equal or exceed \$25,000), or principals that the subrecipients or contractors engage to accomplish the scope of work, if applicable, do not appear on the federal government's Excluded Parties List. Subrecipients and contractors may not enter into a contract or subcontract with an entity, or that entity's principals, if that entity or its principals appear on the Excluded Parties List.
3. The recipient must include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts described in 31 C.F.R. Part 19, subpart B) that the award is subject to 31 C.F.R. Part 19.

**Q DRUG FREE WORKPLACE**

The recipient must comply with the provisions of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Sec. 5153, as amended by Public Law 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 8102), and Treasury implementing regulations at 31 C.F.R. Part 20, which require that the recipient take steps to provide a drug-free workplace.

**R LOBBYING RESTRICTIONS**

**1. Lobbying Restrictions**

- a. Solely for the purposes of Section R of these Standard Terms and Conditions, "recipient" is used as defined at 31 C.F.R. § 21.105(0). Solely for the purposes of Section R of these Standard Terms and Conditions, "award recipient" refers to the recipient of this RESTORE Act award from Treasury.
- b. All recipients must comply with the provisions of 31 U.S.C. § 1352, as amended, and with regulations at 31 C.F.R. Part 21. No appropriated funds may be expended by the recipient of a Federal grant to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant or the extension, continuation, renewal, amendment, or modification of any Federal grant.

**2. Certification**

- a. Each person who requests or receives from Treasury a RESTORE Act grant shall file with Treasury a certification, set forth in Appendix A of 31 C.F.R. Part 21, that the person has not made, and will not make, any payment prohibited under 31 U.S.C. § 1352, as amended.
- b. The certification shall be filed pursuant to 31 C.F.R. § 21.100(a) and (b).
- c. Any subrecipient, at any tier, who receives a subaward exceeding \$100,000 under

this award, shall file with the tier above them a certification, set forth in appendix A of 31 C.F.R. Part 21, that the subrecipient as not made, and will not make, any payment prohibited by 31 C.F.R. § 21.100(a). Pursuant to 31 C.F.R. 21.100(d), the certification shall be filed to the next tier above.

- d. Any contractor or subcontractor, at any tier, who receives a contract or subcontract exceeding \$100,000 under this award, shall file with the tier above them a certifications, set forth in Appendix A of 31 C.F.R. Part 21, that the contractor or subcontractor has not made, and will not make, any payment prohibited by 31 U.S.C. § 1352, as amended. Pursuant to 31 C.F.R. 21.100(d), the certification shall be filed to the next tier above.
- e. Every certification filed shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared with any tier to which the erroneous representation if forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification. If a person fails to file a required certification, the United States may pursue all available remedies, including those authorized by 31 U.S.C. § 1352.

### **3. Disclosure of Lobbying Activities**

- a. The award recipient of this RESTORE Act grant from Treasury, if this grant exceeds \$100,000, shall file with Treasury disclosure form SF-LLL, set forth in Appendix B of 31 C.F.R. Part 21, if that award recipient is paid or will pay any funds, other than Federal appropriated funds, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant.
- b. Every recipient of a subaward under this RESTORE Act grant from Treasury, if this grant exceeds \$100,000, shall file with the tier above it the disclosure form SF-LLL, set forth in Appendix B of 31 C.F.R. Part 21, if that recipient has paid or will pay any funds, other than Federal appropriated funds, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant. Each tier who receives the completed and signed SF-LLL disclosure form shall forward it to the tier above it, and the award recipient of this RESTORE Act grant from Treasury will forward it to Treasury.
- c. Every recipient of a contract or subcontract under this RESTORE Act grant from Treasury, if this grant exceeds \$100,000, shall file with the tier above it the disclosure form SF-LLL, set forth in Appendix B of 31 C.F.R. Part 21, if that recipient has paid or will pay any funds, other than Federal appropriated funds, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant. Each tier who receives the completed and signed SF-LLL disclosure form shall forward it to the tier above it, and the award recipient of this RESTORE Act grant from Treasury will forward it to Treasury.
- d. Every SF-LLL disclosure form filed shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an

erroneous representation shall be borne solely by the tier filing that representation and shall not be shared with any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification. If a person fails to file a required disclosure, the United States may pursue all available remedies, including those authorized by 31 U.S.C. § 1352,

- e. Pursuant to 31 C.F.R. § 21.110(c), every recipient must file a new disclosure form at the end of each calendar quarter in which a payment, or an agreement to make a payment, is made which would have otherwise required reporting at the time of application. Moreover, if an event occurs during the calendar quarter which materially affects the accuracy of information reported on the disclosure form previously submitted, the submitter must file a new disclosure form. Events which “materially affect” the accuracy of information already reported include:
  - i. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action;
  - ii. A change in the persons(s) influencing or attempting to influence; and/or
  - iii. A change in the Federal official(s) contacted to influence or attempt to influence a covered Federal action,
- f. The award recipient must submit its form SF-LLLs, as well as those received from subrecipients, contractors and subcontractors, to Treasury within 30 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed.
- g. The award recipient must include a statement in all subaward, contracts and subcontracts exceeding \$100,000 in federal funds, that the subaward, contract, or subcontract is subject to 31 U.S.C. § 1352,
- h. The award recipient must require subrecipients, contractors and subcontractors to submit form SF-LLL to the award recipient with 15 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure from previously filed.

## **S PROCUREMENT**

1. The recipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
2. When the recipient makes a subaward to a subrecipient that is authorized to enter into contracts for the purpose of completing the subaward scope of work, the recipient must require the subrecipient to comply with the requirements contained in this section.
3. Requirements applicable to recipients that are states: When executing procurement



actions under this Award, the recipient must follow the same policies and procedures it uses for procurements from its non-federal funds. The recipient must ensure that every purchase order or other contract contains any clauses required by federal statutes and EOs and their implementing regulations, including all of the provisions listed in Appendix II to 2 C.F.R. Part 200—*Contract Provisions for Non-Federal Entity Contracts under Federal Awards*, as well as any other provisions required by law or regulations.

4. Requirements applicable to recipients that are not states: The recipient must follow all procurement requirements set forth in 2 C.F.R. §§ 200.318, 200.319, 200.320, 200.321, 200.323, and 200.324. In addition, all contracts executed by the recipient to accomplish the approved scope of work must contain any clauses required by federal statutes and EOs and their implementing regulations, including all of the provisions listed in Appendix II to 2 C.F.R. Part 200—*Contract Provisions for Non-Federal Entity Contracts under Federal Awards*.
5. The recipient, subrecipient, contractor, and/or subcontractor must not sub-grant or sub-contract any part of the approved project to any agency or employee of Treasury and/or other federal department, agency, or instrumentality without the prior written approval of Treasury. Treasury will forward all requests to Treasury's Office of General Counsel for review before making a decision. Treasury will notify the recipient in writing of the final determination.

## **T RESEARCH INVOLVING HUMAN SUBJECTS**

1. No research involving human subjects is permitted under this Award unless expressly authorized by a special award condition, or otherwise in writing by Treasury.
2. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
3. The recipient must maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the recipient must submit appropriate documentation to Treasury for approval by the appropriate Treasury officials. This documentation may include:
  - a. Documentation establishing approval of the project by an institutional review board (IRB) approved for federal-wide use under Department of Health and Human Services guidelines;
  - b. Documentation to support an exemption for the project;
  - c. Documentation to support deferral for an exemption or IRB review; or
  - d. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
4. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by Treasury.

## **U ENVIRONMENTAL REQUIREMENTS**

The recipient must comply with all environmental standards, and provide information requested by Treasury relating to compliance with environmental standards, including but not limited to the following federal statutes, regulations, and EOs. If the recipient is permitted to make any subawards, the recipient must include all of the environmental statutes, regulations, and executive

orders listed below in any agreement or contract with a subrecipient, and require the subrecipient to comply with all of these and to notify the recipient if the subrecipient becomes aware of any impact on the environment that was not noted in the recipient's approved application package:

1. National Historic Preservation Act, as amended (54 U.S.C. § 300101 et seq.) and Archeological and Historic Preservation Act, as amended (54 U.S.C. § 312501 et seq.)
2. The National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 et seq.)
3. Clean Air Act, as amended (42 U.S.C. § 7401 et seq.), Clean Water Act, as amended (33 U.S.C. § 1251 et seq.), and EO 11738
4. The Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4002 et seq.)
5. The Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 et seq.)
6. The Coastal Zone Management Act, as amended, (16 U.S.C. § 1451 et seq.)
7. The Coastal Barriers Resources Act, as amended, (16 U.S.C. § 3501 et seq.)
8. The Wild and Scenic Rivers Act, as amended, (16 U.S.C. § 1271 et seq.)
9. The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. § 300f-j)
10. The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. § 6901 et seq.)
11. The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 et seq.) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note)
12. Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. §1801)
13. Marine Mammal Protection Act, as amended (16 U.S.C § 31)
14. Migratory Bird Treaty Act, as amended (16 U.S.C. §§ 703-712)
15. Responsibilities of Federal Agencies to Protect Migratory Birds, EO 13186
16. Bald and Golden Eagle Protection Act, as amended (16 U.S.C. § 668-668d)
17. Marine Protection, Research and Sanctuaries Act (33 U.S.C. §§ 1401-1445 and 16 U.S.C. §§ 1431—1445)
18. National Marine Sanctuaries Act, as amended (16 U.S.C. § 1431 et seq.)
19. Rivers and Harbors Act of 1899 (33 U.S.C § 407)
20. Environmental Justice in Minority Populations and Low Income Populations, EO 12898, as amended
21. Floodplain Management, EO 11988, as amended by EO 13690 and, Protection of Wetlands, EO 11990, May 24, 1977, as amended by EO 12608
22. Farmland Protection Policy Act, as amended (7 U.S.C. § 4201 et. seq.)
23. Coral Reef Protection, EO 13089 Invasive Species, EO 13112

## **V MISCELLANEOUS REQUIREMENTS AND PROVISIONS**

The recipient must comply with all miscellaneous requirements and provisions described in this section and, when applicable, require its subrecipients, contractors, and subcontractors to comply. This list is not exclusive:



**1. Prohibition Against Assignment by the Recipient**

Notwithstanding any other provision of this Award, the recipient must not transfer, pledge, mortgage, or otherwise assign this Award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of Treasury.

**2. Disclaimer Provisions**

- a. The United States expressly disclaims any and all responsibility or liability to the recipient or third persons for the actions of the recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Award or any other losses resulting in any way from the performance of this Award or any subaward, contract, or subcontract under this Award.
- b. The acceptance of this Award by the recipient does not in any way constitute an agency relationship between the United States and the recipient.

**3. Prohibited and Criminal Activities**

- a. The Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3812), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the federal government for money (including money representing grants, loans or other benefits).
- b. False Statements, as amended (18 U.S.C. § 1001) provides that whoever makes or presents any materially false, fictitious, or fraudulent statements to the United States shall be subject to imprisonment of not more than five years.
- c. False, Fictitious, or Fraudulent Claims, as amended (18 U.S.C. § 287) provides that whoever makes or presents a false, fictitious, or fraudulent claim against or to the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided in 18 U.S.C. § 287.
- d. False Claims Act, as amended (31 U.S.C. 18 U.S.C. § 3729 et seq.), provides that suits under this act can be brought by the federal government, or a person on behalf of the federal government, for false claims under federal assistance programs
- e. Copeland "Anti-Kickback" Act, as amended (18 U.S.C. § 874 and 40 U.S.C. § 276c), prohibits a person or organization engaged in a federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland "Anti-Kickback" Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

**4. Political Activities**

The recipient must comply, as applicable, with provisions of the Hatch Act, as amended (5 U.S.C. §§ 1501-1508 and §§ 7321-7326) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

**5. American-Made Equipment and Products**

The recipient is hereby notified that it is encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this

Award.

**6. Increasing Seat Belt Use in the United States**

Pursuant to EO 13043, the recipient should encourage its employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented or personally owned vehicles.

**7. Minority Serving Institutions (MSIs) Initiative**

Pursuant to EOs 13555 and 13270, as amended, Treasury is strongly committed to broadening the participation of MSIs in its financial assistance programs. Treasury's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from federal financial assistance programs. Treasury encourages recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website at <http://www2.ed.gov/about/offices/list/ocr/edlite-minorityinst.html>.

**8. Research Misconduct**

Treasury adopts, and applies to Awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the EO of the President's Office of Science and Technology Policy on December 6, 2000 (65 Fed. Reg. 76260 (2000)). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipients that conduct research funded by Treasury must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipients also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the Award, up to and including Award termination and possible suspension or debarment. Treasury requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to Treasury, which will also notify the Treasury Office of Inspector General of such allegation. Once the recipient has investigated the allegation, it will submit its findings to Treasury. Treasury may accept the recipient's findings or proceed with its own investigation; Treasury shall inform the recipient of the Treasury's final determination.

**9. Care and Use of Live Vertebrate Animals**

Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Public Law 89-544), as amended, (7 U.S.C. § 2131 et seq.) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations, 9 C.F.R. Parts 1, 2, and 3; the Endangered Species Act, as amended, (16 U.S.C. § 1531 et seq.); Marine Mammal Protection Act, as amended, (16 U.S.C. § 1361 et seq.) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act, as amended, (16 U.S.C. § 4701 et seq.) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by federal financial assistance.

**10. The Trafficking Victims Protection Act of 2000, as amended. (22 U.S.C. § 7104(g)), and the implementing regulations at 2 C.F.R. Part 175**

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the federal government, if the recipient or subrecipient engages in certain activities related to trafficking in persons.

*a. Provisions applicable to a recipient that is a private entity.*

1. You as the recipient, your employees, subrecipients under this Award, and subrecipients' employees may not—
  - i. Engage in severe forms of trafficking in persons during the period of time that this Award is in effect;
  - ii. Procure a commercial sex act during the period of time that this Award is in effect; or
  - iii. Use forced labor in the performance of this Award or subawards under this Award.
2. We as the federal awarding agency may unilaterally terminate this Award, without penalty, if you or a subrecipient that is a private entity —
  - i. Is determined to have violated a prohibition in paragraph a.1 of this Section V.10; or
  - ii. Has an employee who is determined by the agency official authorized to terminate this Award to have violated a prohibition in paragraph a.1 of this Section V.10 through conduct that is either—
    - A. Associated with performance under this Award; or
    - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 31 C.F.R. Part 19.

*b. Provision applicable to a recipient other than a private entity.* We as the federal awarding agency may unilaterally terminate this Award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this Section V.10; or
2. Has an employee who is determined by the agency official authorized to terminate this Award to have violated an applicable prohibition in paragraph a.1 of this Section V.10 through conduct that is either—
  - i. Associated with performance under this Award; or
  - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 31 C.F.R. Part 19.

*c. Provisions applicable to any recipient.*

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this Section V.10.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this Section V.10:
  - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and
  - ii. Is in addition to all other remedies for noncompliance that are available to us under this Award.
3. You must include the requirements of paragraph a.1 of this Section V.10 in any subaward you make to a private entity.
- d. *Definitions.* For purposes of this award term:
  1. "Employee" means either:
    - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this Award; or
    - ii. Another person engaged in the performance of the project or program under this Award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
  2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
  3. "Private entity":
    - i. Means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.
    - ii. Includes:
      - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).
      - B. A for-profit organization
  4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at § 103 of the TVPA, as amended (22 U.S.C. § 7102).

**11. The Federal Funding Accountability and Transparency Act of 2006, as amended. (Pub. L. No. 109-282. 31 U.S.C. § 6101 note)**

- a. The award term at Appendix A of 2 C.F.R. Part 170 is hereby incorporated by reference.
- b. The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires information on federal awards to be made available to the public via a single, searchable website. This information is available at [www.USASpending.gov](http://www.USASpending.gov). The FFATA Subaward Reporting System (FSRS) is the reporting tool federal prime awardees (*i.e.*, prime contractors and prime grants recipients) use to capture and report subaward and executive compensation data regarding their first-tier subawards to meet the FFATA reporting requirements. Prime grant awardees will report against sub-grants awarded. The subaward information entered in FSRS will then be displayed at

<http://www.USASpending.gov>.

- c. Recipients of RESTORE Act funding are subject to FFATA subaward reporting requirements as outlined in the OMB guidance on FFATA issued August 27, 2010. The recipient is required to file a FFATA subaward report by the end of the month following the month in which the recipient makes any subaward greater than or equal to \$25,000. This includes any action that brings the cumulative total award to \$25,000 or more. This report must be filed electronically at <http://www.fsrc.gov>.
- d. The recipient must report total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, by the end of the month following the month in which this Award is made, and annually thereafter if—
  - i. The total federal funding authorized to date under this Award is \$25,000 or more; and
  - ii. In the preceding fiscal year, the recipient received—
    - 1) 80 percent or more of annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to FFATA, as defined at 2 C.F.R. § 170.320 (and subawards); and
    - 2) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to FFATA, as defined at 2 C.F.R. 170.320 (and subawards); and
  - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under § 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)
- e. The recipient must report on the total compensation of its subrecipients' five most highly compensated executives, as required by FFATA, and must include provisions in every executed contract or agreement with affected subrecipients requiring the subrecipient to provide all information necessary for the recipient to report on subrecipient executive compensation. The recipient must report on subrecipient executive compensation by the end of the month following the month during which the recipient makes the subaward.
- f. The recipient must keep its information current in SAM (System for Award Management, which is the successor to the Central Contractor Registry, (CCR)) at least until submission of the final SF-425 or receipt of the final Award payment, whichever is later. This requires that the recipient review and update the information at least annually after the initial registration, and more frequently if required by changes in the recipient's information. SAM is the federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management Internet site (currently at <https://www.sam.gov/portal/public/SAM/>).
- g. If the recipient is authorized to make subawards under this Award, the recipient must notify potential subrecipients that the recipient may not make a subaward to any entity unless that entity has provided its Data Universal Numbering System (DUNS) number to the recipient. A DUNS number is the nine-digit number

established and assigned by Dun and Bradstreet, Inc. to uniquely identify business entities.

**12. Recipient Integrity and Performance Matters (80 FR 43301, July 22, 2015) Reporting of Matters Related to Recipient Integrity and Performance**

**a. *General Reporting Requirement***

If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then the recipient during that period of time must maintain the accuracy of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph b. of this award term and condition. This is a statutory requirement under § 872 of Public Law 110-417, as amended (41 U.S.C. § 2313). As required by § 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

**b. *Proceedings About Which The Recipient Must Report***

The recipient must submit the information required about each proceeding that:

- i. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- ii. Reached its final disposition during the most recent five year period; and
- iii. Is one of the following:
  - 1) A criminal proceeding that resulted in a conviction, as defined in paragraph e. of this award term and condition;
  - 2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - 3) An administrative proceeding, as defined in paragraph e. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  - 4) Any other criminal, civil, or administrative proceeding if:
    - a) It could have led to an outcome described in paragraph b.iii. 1), 2), or 3) of this award term and condition;
    - b) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
    - c) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

**c. *Reporting Procedures***

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph b of this award term and condition.



The recipient does not need to submit the information a second time under assistance awards that the recipient received if they already provided the information through SAM because they were required to do so under Federal procurement contracts that they were awarded.

d. *Reporting Frequency*

During any period of time when the recipient is subject to the requirement in paragraph 1 of this award term and condition, the recipient must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that they have not reported previously or affirm that there is new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

e. *Definitions*

For purposes of this award term and condition:

- i. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- ii. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- iii. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  - 1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - 2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

**13. Publications and Signage**

Any publications (except scientific articles or papers appearing in scientific, technical, or professional journals) or signage produced with funds from this Award, or informing the public about the activities funded in whole or in part by this Award, must clearly display the following language: "This project was paid for [in part] with federal funding from the Department of the Treasury under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act)." Publications (except scientific articles or papers appearing in scientific, technical, or professional journals) produced with funds from this Award must display the following additional language: "The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the Department of the Treasury."

#### **14. Homeland Security Presidential Directive 12**

If the performance of this Award requires the recipient's personnel to have routine access to Treasury-controlled facilities and/or Treasury-controlled information systems (for purpose of this term "routine access" is defined as more than 180 days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, Treasury will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under this Award must comply with Treasury personal identity verification procedures that implement Homeland Security Presidential Directive 12, "Policy for a Common Identification Standard for Federal Employees and Contractors", FIPS PUB 201, as amended, and OMB Memorandum M-05-24, as amended. The recipient must ensure that its subrecipients and contractors (at all tiers) performing work under this Award comply with the requirements contained in this Section V.14. Treasury may delay final payment under this Award if the subrecipient or contractor fails to comply with the requirements listed in the section below. The recipient must insert the following term in all subawards and contracts when the subrecipient or contractor is required to have routine physical access to a Treasury-controlled facility or routine access to a Treasury-controlled information system:

- a. The subrecipient or contractor must comply with Treasury personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication, FIPS PUB 140-2, as amended, for all employees under this subaward or contract who require routine physical access to a federally controlled facility or routine access to a federally controlled information system.
- b. The subrecipient or contractor must account for all forms of government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor must return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by Treasury:
  - i. When no longer needed for subaward or contract performance;
  - ii. Upon completion of the subrecipient or contractor employee's employment; or
  - iii. Upon subaward or contract completion or termination.

#### **15. Foreign Travel**

- a. The recipient may not use funds from this Award for travel outside of the United States unless Treasury provides prior written approval.
- b. The recipient must comply with the provisions of the Fly America Act, as amended, (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131–301-10.143.
- c. The Fly America Act requires that federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.



- d. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral “Open Skies Agreements” (U.S. Government Procured Transportation) that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple “Open Skies Agreements” currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA website <http://www.gsa.gov/portal/content/103191>. Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State’s website <http://www.state.gov/e/eeb/tra/>.
- e. If a foreign air carrier is anticipated to be used for any portion of travel funded under this Award, the recipient must receive prior approval from the Treasury. When requesting such approval, the recipient must provide a justification in accordance with guidance provided by 41 C.F.R. § 301–10.142, which requires the recipient to provide Treasury with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the recipient must provide Treasury with a copy of the agreement or a citation to the official agreement available on the GSA website. Treasury shall make the final determination and notify the recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the recipient not being reimbursed for any transportation costs for which the recipient improperly used a foreign air carrier.

## 16. **Export Control**

- a. This clause applies to the extent that this Award involves access to export-controlled items.
- b. In performing this financial assistance Award, the recipient may gain access to items subject to export control (export-controlled items) under the Export Administration Regulations (EAR) issued by the Department of Commerce (DOC). The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR’s deemed exports and re-exports provisions. The recipient shall establish and maintain effective export compliance procedures throughout performance of the Award. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled items, including by foreign nationals.
- c. Definitions:
  - i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730–774), implemented by the DOC’s Bureau of Industry and Security. These are generally known as “dual-use” items, items with a military and commercial application.
  - ii. Deemed Export/Re-export. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is “deemed” to be an export to the home country of the foreign national. 15 C.F.R. §

734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the United States. If such a release occurs abroad, it is considered a deemed re-export to the foreign national's home country. Licenses from DOC may be required for deemed exports or re-exports.

- d. The recipient shall control access to all export-controlled items that it possesses or that comes into its possession in performance of this Award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable federal statutes, EOs, and/or regulations, including the EAR.
- e. To the extent the recipient wishes to provide foreign nationals with access to export-controlled items, the recipient shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed re-exports.
- f. Nothing in the terms of this Award is intended to change, supersede, or waive the requirements of applicable federal statutes, EOs, and/or regulations.
- g. Compliance with this Section V.15 will not satisfy any legal obligations the recipient may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports of munitions items subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120–130), including releases of such items to foreign nationals.
- h. The recipient shall include this clause, including this paragraph (i), in all lower tier transactions (subawards, contracts, and subcontracts) under this Award that may involve access to export-controlled items.

## **SUPPLEMENTAL STANDARD TERMS AND CONDITIONS - AWARDS UNDER THE DIRECT COMPONENT FOR ACQUISITION AND IMPROVEMENTS TO REAL PROPERTY**

### **W ACQUISITION AND IMPROVEMENTS TO REAL PROPERTY**

#### **1. Compliance with State, Local and Federal Requirements**

The project must comply with all applicable federal laws and regulations, and with all requirements for state, and local laws and ordinances to the extent that such requirements do not conflict with federal laws. The recipient is also responsible for supervising the design, bidding, construction, and operation of construction projects in compliance with all award requirements. The recipient must comply with, and must require all contractors and subcontractors, to comply with all federal, state, and local laws and regulations. The recipient must ensure compliance with special award conditions which may contain conditions that must be satisfied prior to advertisement of bids, start of construction, or other critical event.

#### **2. Title**

Prior to receiving Treasury authorization to start construction, the recipient must furnish evidence, satisfactory to Treasury, that the recipient has acquired good and merchantable title free of all mortgages, foreclosable liens, or encumbrances, to all land, rights of way and easements necessary for the completion of the project.

### **3. Permitting Requirements**

Prior to receiving Treasury authorization to start construction, the recipient must furnish evidence, satisfactory to Treasury, that recipient has received all federal, state and local permits necessary for the completion of the project.

### **4. Federal Interest in Real Property**

"Federal interest" refers to real property that is acquired or improved, in whole or in part, with RESTORE Act Direct Component funds, which must be held in trust by the Recipient for the benefit of the project for the Estimated Useful Life of the project, during which period Treasury retains an undivided equitable reversionary interest in the real property (i.e., the "federal interest").

### **5. Estimated Useful Life**

Property that is acquired or improved, in whole or in part, with federal assistance is held in trust by the recipient for the purpose(s) for which the award was made for the Estimated Useful Life. Estimated Useful Life means the period of years that constitutes the expected useful lifespan of a project, as determined by Treasury, during which Treasury anticipates obtaining the benefits of the project pursuant to project purposes authorized by the RESTORE Act. For this award the recipient has proposed an Estimated Useful Life from the date of construction completion. Treasury's issuance of the grant agreement represents its concurrence with the recipient's proposed Estimated Useful Life.

The recipient's obligation to the federal government continues for the Estimated Useful Life of the project, as determined by Treasury, during which Treasury retains an undivided equitable reversionary interest (the "federal interest") in the property improved, in whole or in part, with the Treasury investment.

If Treasury determines that the recipient has failed or fails to meet its obligations under the terms and conditions of this award, Treasury may exercise its rights or remedies with respect to its federal interest in the project. However, Treasury's forbearance in exercising any right or remedy in connection with the federal interest does not constitute a waiver thereof.

### **6. Commencement of Construction**

The recipient should not commence construction prior to the date of the Award. The recipient must make a written request to Treasury for permission to commence construction after the construction contractor has been selected and at least 30 days prior to construction. For project costs to be eligible for Treasury reimbursement, Treasury must determine that the award of all contracts with associated costs are in compliance with the scope of the project and all terms and conditions of this award, and all necessary permits have been obtained, and the federal interest is secure. No construction funds may be drawn from ASAP without Treasury's written permission. If the recipient commences construction prior to Treasury's determination, the recipient proceeds at its own risk.

Treasury will only review contract amendments or change orders which change the scope of a contract.

### **7. Use of Real Property**

Encumbering real property on which there is a federal interest without prior Treasury approval is an unauthorized use of the property and of project trust funds under this

award. See 2 C.F.R. § 200.316. Real property or interest in real property may not be used for purposes other than the authorized purpose of the award without the express, prior written approval of Treasury, for as long as the federal government retains an interest in the property. The property must not be sold, conveyed, transferred, assigned, mortgaged, or in any other manner encumbered except as expressly authorized in writing by Treasury. The recipient must maintain facilities constructed or renovated with grant funds in a manner consistent with the purposes for which the funds were provided for the duration of the Estimated Useful Life.

In the event that the real property or interest in real property is no longer needed for the originally authorized purpose, the recipient must obtain disposition instructions from Treasury consistent with 2 C.F.R. § 200.311.

## **8. Recording the Federal Interest in the Real Property**

To document the federal interest, the recipient agrees to prepare and properly record a “Covenant of Purpose, Use and Ownership” (Covenant), or, where a subrecipient is the title owner, to ensure that the subrecipient prepares and properly records a “Covenant of Purpose, Use and Ownership” (Covenant) on the property acquired or improved with federal assistance funds. See 2 C.F.R. § 200.316. This Covenant does not establish a traditional mortgage lien in that it does not establish a traditional creditor relationship requiring the periodic repayment of principal and interest, or the ability of Treasury to foreclose on the real property at any time. Rather, pursuant to the Covenant, the recipient and/or the subrecipient, as applicable, acknowledges that it holds title to the real property in trust for the public purposes of the financial assistance award and agrees, among other commitments, that it will repay the federal interest if it disposes of or alienates an interest in the real property, or uses it in a manner inconsistent with the public purposes of the award, during the Estimated Useful Life of the property.

- a. The Covenant must be satisfactory in form and substance to Treasury, must include the name and current address of the recipient and subrecipient (if applicable), the grant award number, amount and date of award and subrecipient agreement (if applicable), date of the purchase of property (if applicable), and the Estimated Useful Life of the project. It must also include statements that the real property will only be used for purposes consistent with the RESTORE Act; that it will not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the written permission of Treasury; and that the federal interest cannot be subordinated, diminished, nullified or released through encumbrance of the property, transfer of the property to another party or any other action the recipient/subrecipient takes without the written permission of Treasury.
- b. The recipient agrees to provide to Treasury an attorney's title opinion as to the title owner of the property, and to properly record, in accordance with applicable law, the Covenant in the real property records in the jurisdiction in which the real property is located in order to provide public record notice to interested parties that there are certain restrictions on the use and disposition of the real property during its Estimated Useful Life, and that Treasury retains an undivided equitable reversionary interest in the real property to the extent of its participation in the project for which funds have been awarded.
- c. Treasury requires an opinion of counsel for the recipient to substantiate that the document has been properly recorded.
- d. Failure to properly and timely file and maintain documentation of the federal interest may result in appropriate enforcement action, including, but not limited to, disallowance of the cost of the acquisition or improvement by Treasury.

- e. The Federal Interest must be perfected and recorded/filed in accordance with state and/or local law concurrent with the acquisition of the real property, where an award includes real property acquisition, and for construction of buildings and projects to improve the real property, no later than the date construction and/or improvement work commences.
- f. When the Estimated Useful Life of the project is ended, the federal interest is extinguished and the federal government has no further interest in the real property.

**9. Administration, Operation and Maintenance**

The recipient agrees to administer, operate, and maintain the project for its Estimated Useful Life in the same manner in which it operates and maintains similar facilities and equipment owned by it, and in accordance with state and local standards, laws and regulations. The recipient must not be in breach of its obligations under this award except to the extent the failure to fulfill any obligation is due to an Uncontrollable Force.

“Uncontrollable Force” means an event beyond the reasonable control of, and without the fault or negligence of, the party claiming the Uncontrollable Force that prevents the recipient from honoring its contractual obligations under this Agreement and which, by exercise of the recipient’s reasonable care, diligence and foresight, such recipient was unable to avoid. Uncontrollable Forces include, but are not limited to:

- a. Strikes or work stoppage;
- b. Floods, earthquakes, or other natural disasters; terrorist acts; and
- c. Final orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the recipient, claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction. Neither the unavailability of funds or financing, nor conditions of national or local economies or markets must be considered an Uncontrollable Force.

**10. Reporting Requirement**

The recipient must complete and submit to Treasury a report on the status of the real property or interest in real property in which the federal government retains an interest, using a *SF-429 Real Property Status Report* form annually for the first three years of a federal award and thereafter every five years until the end of the Estimated Useful Life or time of disposition, whichever is less. All reports must be for the period ending December 31, or any portion thereof, beginning with the year of the award, and are due no later than 30 days following the end of the reporting period.

**11. Insurance**

The recipient must, at a minimum, provide the equivalent insurance coverage for real property improved with federal funds as provided to property owned by the recipient state, county or parish, in compliance with 2 C.F.R. § 200.310.

**12. Bonding**

- a. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the recipient or pass-through entity may request in writing that Treasury accept its bonding policy and requirements. If Treasury

determines that the federal interest in the project is adequately protected, the recipient or pass-through entity need not comply with the following three bonding requirements. For all other recipients and pass-through entities, the minimum requirements for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold are as follows: A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual instruments as may be required within the time specified.

- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **13. Floodplain Requirements**

In accordance with 44 C.F.R. Part 9, prior to Treasury's authorization to commence construction in a designated 100-year floodplain, the recipient must provide evidence satisfactory to Treasury of a Floodplain Notice, that the 30-day period established for receipt of comments from the public in response to public notice published regarding the potential for adverse project impact on the values and functions of a designated 100-year floodplain has expired and that identified concerns (if any) have been addressed to Treasury's satisfaction. This notice may be satisfied through a federal/state environmental assessment process used as the vehicle for public notice, involvement, and explanation per 44 C.F.R. § 9.8(2).

In addition, prior to Treasury's authorization to commence construction of structures and/or buildings within a designated 100-year floodplain, the recipient must provide evidence satisfactory to Treasury of the following:

- a. Floodplain Protection: That the project engineer/architect has certified that the project facility will be adequately protected from damage by floods in this area of apparent potential flood hazard. The evidence must include adequate justification for the Base Flood Elevation designation for the financial assistance award site.
- b. Floodplain Insurance: That the community is participating in the National Flood Insurance Program, and that as required, the recipient will purchase flood insurance.

### **14. Goals for Women and Minorities in Construction**

Department of Labor regulations set forth in 41 C.F.R. § 60-4 establish goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all federally assisted construction contracts in excess of \$10,000. The recipient must comply with these regulations and must obtain compliance with 41 C.F.R. § 60-4 from contractors and subcontractors employed in the completion of the project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 C.F.R. § 60-4.



- a. The goal for participation of women in each trade area must be as follows:  
From April 1, 1981, until further notice: 6.9 percent;
- b. All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 C.F.R. § 60-4.6, or any successor regulations, must hereafter be incorporated by reference into these Special Award Conditions; and,
- c. Goals for minority participation must be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The recipient must include the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" (or cause them to be included, if appropriate) in all federally assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 C.F.R. § 60-6.

**15. Contracting with small and minority businesses, women's business enterprise, and labor surplus area firms**

The recipient must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and,
- f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in (a) — (e) of this paragraph.

**16. Davis Bacon Act, as amended (40 U.S.C. §§ 3141–3148)**

Davis-Bacon Act-related provisions are applicable for a construction project if it is for the construction of a project that can be defined as a "treatment works" in 33 U.S.C § 1292; or for a construction project regardless of whether it is a "treatment works" project if it is receiving federal assistance from another federal agency operating under an authority that requires the enforcement of Davis-Bacon Act-related provisions. When required, all prime construction contracts in excess of \$2,000 awarded by the non-Federal entity must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141–3144, and §§ 3146–3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must

be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition contracts must be required to pay wages not less than once a week.

The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to Treasury. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contracts and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation or which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to Treasury.

**17. Equal Opportunity Clause**

Pursuant to 41 C.F.R. § 60-1.4(b), Federally assisted construction contracts, for construction which is not exempt from the requirements of the equal opportunity clause, 41 C.F.R. Part 60-1—Obligations of Contractors and Subcontractors, [t]he [recipient] hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the federal government or borrowed on the credit of the federal government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

**41 C.F.R. § 60-1.4 Equal opportunity clause.**

*During the performance of this contract, the contractor agrees as follows:*

*(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 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 he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, 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 rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering 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 noncompliance with the nondiscrimination clauses of this contract or with any of the said 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 or federally assisted construction 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 portion of the sentence immediately preceding paragraph (1) and 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 the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:*

*Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.*

*The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.*

*The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.*

*The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.*

#### **18. Revised ADA Standards for Accessible Design for Construction Awards**

The U.S. Department of Justice has issued revised regulations implementing Title II of the ADA (28 C.F.R. Part 35) and Title III of the ADA (28 C.F.R. Part 36). The revised regulations adopted new enforceable accessibility standards called the "2010 ADA Standards for Accessible Design" (2010 Standards). The 2010 Standards are an acceptable alternative to the Uniform Federal Accessibility Standards (UFAS). Treasury deems compliance with the 2010 Standards to be an acceptable means of complying with the Section 504 accessibility requirements for new construction and alteration projects. All new construction and alteration projects must comply with the 2010 Standards.

## **MDEQ STANDARD SUB-AWARD TERMS AND CONDITIONS**

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## **ATTACHMENT C**

### **STANDARD SUB-AWARD TERMS AND CONDITIONS**

#### **1. APPLICABLE LAW**

The Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi and applicable federal law excluding its conflicts of laws provisions. SUB-RECIPIENT shall comply with applicable federal, state, and local laws and regulations.

#### **2. AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of MDEQ to proceed under this Agreement is conditioned upon the availability of the funds from state, federal, and/or other funding sources. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to MDEQ, MDEQ shall have the right upon ten (10) working days written notice to the SUB-RECIPIENT, to terminate this Agreement without damage, penalty, cost or expenses to MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

#### **3. REPRESENTATION REGARDING CONTINGENT FEES**

SUB-RECIPIENT represents that it has not retained a person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

#### **4. REPRESENTATION REGARDING GRATUITIES**

SUB-RECIPIENT represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

## **5. PROCUREMENT REGULATIONS**

The SUB-RECIPIENT shall be governed by the applicable provisions of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.DFA.ms.gov>

## **6. SUB-AWARDS**

If the SUB-RECIPIENT is authorized to make a sub-award, the SUB-RECIPIENT must include and incorporate the terms and conditions of the Federal Award, and any Special Award Conditions, the terms and conditions of this Agreement and any attachments, in all lower tier sub-awards. Further, the SUB-RECIPIENT, who makes a sub-award, must follow and carry out all the responsibilities of a pass-through entity described at 2 C.F.R. Part 200.

## **7. COMPLIANCE WITH LAWS**

The SUB-RECIPIENT understands that MDEQ is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and the SUB-RECIPIENT agrees during the Period of Performance of the Agreement that the SUB-RECIPIENT will strictly adhere to this policy in its employment practices and work performance under this Agreement. The SUB-RECIPIENT shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified.

## **8. STOP WORK ORDER**

A. *Order to Stop Work:* MDEQ may, by written order to SUB-RECIPIENT at any time and without notice to any surety, require SUB-RECIPIENT to stop all or any part of the work called for by this Agreement. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to SUB-RECIPIENT, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, SUB-RECIPIENT shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the Parties shall have agreed, MDEQ shall either:

- (1) cancel the stop work order; or,

- (2) terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this Agreement.

B. *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order or if the period of the order or any extension thereof expires, SUB-RECIPIENT shall have the right to resume work. An appropriate adjustment may be made in the Period of Performance or Maximum Amount, or both, and the Agreement shall be modified in writing accordingly if:

- (1) The stop work order results in an increase in the time required for, or in SUB-RECIPIENT's cost properly allocable to, the performance of any part of this Agreement; and
- (2) SUB-RECIPIENT provides a written claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that MDEQ decides that the facts justify such action and any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

C. *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order may be allowed by adjustment or otherwise.

D. *Adjustment of Price:* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

## **9. E-PAYMENT**

SUB-RECIPIENT agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. MDEQ agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq..

## **10. E-VERIFICATION**

If applicable, SUB-RECIPIENT represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1, *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. SUB-RECIPIENT agrees to maintain records of such compliance. Upon request of the State of Mississippi and after approval of the Social Security Administration or Department of Homeland Security, when required, SUB-RECIPIENT agrees to provide a copy of each such verification. SUB-RECIPIENT

further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws.

## **11. TRANSPARENCY**

This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983” and its exceptions. See Miss. Code Ann. §§ 25-61-1 et seq. and Miss. Code Ann. § 79-23-1. In addition, this Agreement is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Agreement may be posted to the Department of Finance and Administration’s independent agency Agreement website for public access at <http://www.transparency.mississippi>. Information identified by SUB-RECIPIENT as trade secrets or other proprietary information, including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes will be redacted.

## **12. PAYMODE**

Payments by state agencies using the statewide accounting system shall be made and remittance information provided electronically as directed by MDEQ. These payments shall be deposited into the bank account of SUB-RECIPIENT’s choice. MDEQ may, at its sole discretion, require the SUB-RECIPIENT to submit invoices and supporting documentation electronically at any time during the Period of Performance of this Agreement. The SUB-RECIPIENT understands and agrees that MDEQ is exempt from the payment of taxes. All payments shall be in United States currency.

## **13. TERMINATION**

The Agreement may be terminated as follows:

### **A. TERMINATION FOR CONVENIENCE**

- (1) *Termination.* The MDEQ may, when the interests of the State so require, terminate this Agreement in whole or in part, for the convenience of the State. MDEQ shall give written notice of the termination to SUB-RECIPIENT specifying the part of the Agreement terminated and when termination becomes effective.
- (2) *SUB-RECIPIENT’s Obligations.* SUB-RECIPIENT shall immediately terminate the specified Work and any further expenditure or obligation of funds, and return to MDEQ any unobligated and unspent portion of the funds then held by SUB-RECIPIENT and shall also terminate outstanding orders and contracts as they relate to the terminated work. SUB-RECIPIENT shall settle the liabilities and claims arising out of the

termination of contracts and orders connected with the terminated work. MDEQ may direct SUB-RECIPIENT to assign SUB-RECIPIENT's right, title, and interest under terminated orders or contracts to the State. SUB-RECIPIENT must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

#### **B. TERMINATION FOR DEFAULT**

If SUB-RECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof or otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUB-RECIPIENT in writing of the delay or nonperformance. If delay or nonperformance is not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may then immediately terminate SUB-RECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, MDEQ may procure similar supplies or services in a manner and upon terms deemed appropriate by MDEQ. SUB-RECIPIENT shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUB-RECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUB-RECIPIENT in which the State has an interest.

#### **C. TERMINATION UPON BANKRUPTCY**

This Agreement may be terminated in whole or in part by MDEQ upon written notice to SUB-RECIPIENT, if SUB-RECIPIENT should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by SUB-RECIPIENT of an assignment for the benefit of its creditors. In the event of such termination, SUB-RECIPIENT shall be entitled to recover just and equitable compensation for satisfactory work performed under this Agreement, but in no case shall said compensation exceed the total Maximum Amount.

### **14. DISPUTES**

Before pleading to any judicial system at any level, the SUB-RECIPIENT must exhaust all administrative remedies. A written complaint must first be sent to the Executive Director of MDEQ. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to the SUB-RECIPIENT within fourteen (14) days after receipt of information requested by MDEQ or the Executive Director. If the decision of the Executive Director does not resolve the matter, successive administrative remedies



may, at the SUB-RECIPIENT's option, include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Miss. Code Ann. Section 49-17-35 and -41. In the alternative, at the SUB-RECIPIENT's option, the decision of the Executive Director may be deemed the final agency action on the complaint. Appeals from the decision of the Executive Director or the Commission shall follow procedures outlined in Miss. Code Ann. Section 49-17-41.

## **15. ANTI-ASSIGNMENT/CONTRACTING**

SUB-RECIPIENT acknowledges that it was selected by MDEQ to perform the Work required hereunder based, in part, upon SUB-RECIPIENT's special skills and expertise. Unless contractors are otherwise identified and approved in accordance with the "Contracts" provision of this Agreement, SUB-RECIPIENT shall not assign, contract, or otherwise transfer this Agreement, in whole or in part without the prior written consent of MDEQ, which MDEQ may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MDEQ of any contract shall be deemed in any way to provide for the incurrence of any obligation of MDEQ in addition to the Maximum Amount agreed upon in this Agreement, nor create any contractual relationship between MDEQ and any Contracted Parties. Contracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that MDEQ may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the parties.

## **16. AUTHORITY TO PARTICIPATE IN THIS AGREEMENT**

The SUB-RECIPIENT certifies that (a) it is a Mississippi governmental entity; (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.

## **17. DEBARMENT AND SUSPENSION**

SUB-RECIPIENT certifies to the best of its knowledge and belief, that it:

- A. 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;
- B. has not, within a three-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 Agreement or Contract under a public

transaction;

- C. has not, within a three-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;
- D. 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 paragraphs two (2) and (3) of this certification; and,
- E. has not, within a three-year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

## **18. CONFIDENTIALITY**

- A. *Information Designated by Contractor as Confidential.* Any disclosure of those materials, documents, data and other information, which SUB-RECIPIENT has designated in writing as proprietary and confidential shall be subject to the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1. As provided in this Agreement, the personal or professional services to be provided, the price to be paid, and the term of the Agreement shall not be deemed to be a trade secret or confidential commercial or financial information.
- B. *Public Records.* Notwithstanding any provision to the contrary contained herein, all Parties recognize that MDEQ is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* If a public records request is made for any information provided to MDEQ pursuant to this Agreement and designated by the SUB-RECIPIENT in writing as trade secrets or other proprietary confidential information, MDEQ shall following provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1 before disclosing such information. MDEQ shall not be liable to SUB-RECIPIENT for disclosure of information required by court order or required by law.
- C. *Disclosure of Confidential Information.* In the event that either party to this Agreement receives notice that a third party requests divulgence of Confidential Information or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of Confidential Information or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this Agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

- D. *Wrongful Disclosure of Confidential Information.* Any liability resulting from the wrongful disclosure of Confidential Information on the part of SUB-RECIPIENT or its contractor shall rest with SUB-RECIPIENT. Disclosure of any Confidential Information by SUB-RECIPIENT or its subcontractor without the express written approval of MDEQ may result in the immediate termination of this Agreement.
- E. *Exceptions to Confidential Information.* SUB-RECIPIENT and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“**Disclosing Party**”) which is:
- (1) Rightfully known to the recipient prior to negotiations leading to this Agreement, other than information obtained in confidence under prior engagements;
  - (2) Generally known or easily ascertainable by nonparties to this Agreement;
  - (3) Released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
  - (4) Independently developed by the recipient without any reliance on confidential information;
  - (5) Part or later becomes part of the public domain or may be lawfully obtained by the State or SUB-RECIPIENT from any nonparty; or
  - (6) Disclosed with the Disclosing Party’s prior written consent; or
  - (7) As otherwise required to be disclosed by law.

## **19. FAILURE TO ENFORCE**

Failure by MDEQ, at any time, to enforce the provisions of this Agreement shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of this Agreement or any part thereof or the right of MDEQ to enforce any provision at any time in accordance with its terms.

## **20. FORCE MAJEURE**

Each Party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its contractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”). When such a cause arises, SUB-RECIPIENT shall notify MDEQ

immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless MDEQ determines it to be in its best interest to terminate the Agreement.

## **21. INDEMNIFICATION**

The SUB-RECIPIENT agrees to maintain responsibility for the Project and agrees to provide proper operation and maintenance of all facilities for the life of the Project. SUB-RECIPIENT's tort liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated §§ 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering this liability or of eliminating any defense available to the State under statute.

## **22. SUB-RECIPIENT STATUS**

The SUB-RECIPIENT shall, during the entire Period of Performance of this Agreement, be construed to be an independent SUB-RECIPIENT. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship or a joint venture relationship.

The SUB-RECIPIENT represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who are qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of MDEQ.

Any person assigned by the SUB-RECIPIENT to perform the services hereunder shall be an employee or independent contractor of the SUB-RECIPIENT, who shall have the sole right to hire and discharge its employees and/or independent contractors under this Agreement.

The SUB-RECIPIENT shall pay, when due, all salaries and wages of its employees and accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. This provision is solely for the benefit of MDEQ, and nothing herein shall be construed to create or impose any contractual or agency relationship between MDEQ and SUB-RECIPIENT'S contractors, subcontractors, employees or agents.

## **23. INSURANCE**

SUB-RECIPIENT is self-insured for liability under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1, *et seq.* The SUB-RECIPIENT must also maintain appropriate insurances to cover property, this includes any equipment purchased under

this Agreement. Should the SUB-RECIPIENT procure additional insurance against liability for injury to persons or property, it should have MDEQ named as additional insureds on all such policies for any work performed by SUB-RECIPIENT pursuant to this Agreement and provide MDEQ with appropriate Certificates of Insurance and endorsements reflecting such additions within thirty (30) days after this Agreement is fully-executed.

#### **24. ENTIRE AGREEMENT**

This Agreement, including all attachments, represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This Agreement may be altered, amended, or modified only by a written document executed by MDEQ and the SUB-RECIPIENT. SUB-RECIPIENT acknowledges that it has thoroughly read this Agreement and all its attachments and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein.

#### **25. AMENDMENTS OR MODIFICATION**

This Agreement may only be amended, modified, or supplemented by written agreement signed by the Parties hereto.

#### **26. ORAL STATEMENTS**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. All modifications to the Agreement must be made in writing by the MDEQ and agreed to by SUB-RECIPIENT.

#### **27. OWNERSHIP OF DOCUMENTS AND WORK PAPERS**

MDEQ shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Project which is the subject of this Agreement, except for SUB-RECIPIENT's internal administrative and quality assurance files and internal project correspondence. SUB-RECIPIENT shall deliver such documents and work papers to MDEQ. The foregoing notwithstanding, SUB-RECIPIENT shall be entitled to retain a set of such work papers for its files.

#### **28. RECORD RETENTION AND ACCESS TO RECORDS**

Provided SUB-RECIPIENT is given reasonable advance written notice and such inspection is made during normal business hours of SUB-RECIPIENT, Treasury, the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of SUB-RECIPIENT'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 SUB-RECIPIENT's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by SUB-RECIPIENT 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.

SUB-RECIPIENT is not required to retain the above-mentioned records for the ten-year period prescribed in this Section and the "Right to Audit" provision only if all of the following conditions are satisfied:

- A. SUB-RECIPIENT 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;
- B. no audit, litigation or other action arising out of or related in any way to this Project is commenced before SUB-RECIPIENT provides the records and corresponding certification to SUB-RECIPIENT, in which case, SUB-RECIPIENT shall retain the records until all issues arising out of the action are finally resolved; and
- C. SUB-RECIPIENT provides MDEQ a minimum of thirty (30) days' written notice before providing the above-mentioned records and corresponding certification.

## **29. RIGHT TO AUDIT**

SUB-RECIPIENT shall maintain such financial records and other records as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. SUB-RECIPIENT shall retain these records for a period of ten years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten-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 and Treasury.

## **30. RIGHT TO INSPECT WORK; ACCESS**

Treasury, the Government Accountability Office, 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.

Notwithstanding any review or inspection by Treasury, the Government Accountability Office, MDEQ and their representatives, invitees, and consultants, SUB-RECIPIENT shall not be relieved of its responsibility for performance of the Work or the submission of reports as expressly set forth in this Agreement solely by virtue of such inspection or review of the Work. SUB-RECIPIENT 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 SUB-RECIPIENT's performance of the Work.

### **31. SEVERABILITY**

If any part of this Agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the Parties shall amend the Agreement as necessary to reflect the original intent of the Parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

### **32. THIRD PARTY ACTION NOTIFICATION**

SUB-RECIPIENT shall give the MDEQ prompt notice in writing of any action or suit filed, and prompt notice of any claim made against SUB-RECIPIENT by any entity that may result in litigation related in any way to this Agreement.

### **33. UNSATISFACTORY WORK**

If, at any time during Period of Performance, the service performed or work done by SUB-RECIPIENT is considered by MDEQ to be unsatisfactory, MDEQ shall notify the SUB-RECIPIENT of such and the SUB-RECIPIENT will be required to correct such service or work. If, at any time during Period of Performance, the service performed or work done by SUB-RECIPIENT is considered by MDEQ to create a condition that threatens the health, safety, or welfare of the environment, citizens and/or employees of the State of Mississippi, SUB-RECIPIENT shall, on being notified by MDEQ, immediately correct such deficient service or work. In the event SUB-RECIPIENT fails, after notice, to correct the deficient service or work immediately, MDEQ shall have the right to order the correction of the deficiency by separate Agreement or with its own resources at the expense of SUB-RECIPIENT.

### **34. WAIVER**

No delay or omission by either Party to this Agreement in exercising anyright, power, or remedy hereunder or otherwise afforded by Agreement, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either Party to this Agreement shall be valid unless set forth in writing by the Party making said waiver. No waiver of or modification to any term or

condition of this Agreement will void, waive, or change any other term or condition. No waiver by one Party to this Agreement of a default by the other Party will imply, be construed as or require waiver of future or other defaults.

### **35. COMPLIANCE WITH MISS. CODE ANN. § 31-5-37**

If applicable, SUB-RECIPIENT shall ensure that Contracted Parties and bidders solicited for contract awards pursuant to this Agreement comply with the requirements of Miss. Code. Ann. § 31-5-37. SUB-RECIPIENT shall require all bidders for any contract of Five Thousand Dollars (\$5,000.00) or more procured or to be procured with funds received pursuant to this Agreement to submit a certification with their bid that said bidder will comply with the provisions of Miss. Code. Ann. § 31-5-37. In addition, within seven (7) days of any such contract award procured or to be procured with funds received pursuant to this Agreement, SUB-RECIPIENT shall require the Contracted Party to submit to both SUB-RECIPIENT and the Mississippi Department of Employment Security (“MDES”) an employment plan which conforms to the requirements contained in Miss. Code. Ann. § 31-5-37(2).

From the date written notice of any such contract award is received and until ten (10) business days after the receipt of the employment plan by MDES, the Contracting Party and any contractors shall not hire any personnel to fill vacant positions for the project except residents of the State of Mississippi who are to be verified by MDES and/or those qualified individuals who are submitted by MDES. However, the Contracting Party or contractor is authorized to employ Mississippi residents to begin work immediately if such persons are verified by MDES after employment by the Contracting Party or contractor. SUB-RECIPIENT shall vacate the contract award in the event the Contracting Party fails to comply with the provisions of Miss. Code Ann. § 31-5-37.

### **36. CONFLICT OF INTEREST**

The SUB-RECIPIENT shall immediately notify MDEQ in writing of any potential conflict of interest resulting from the representation of or service to other clients or otherwise affecting this Agreement in any way. If any such conflict occurs before it is discovered, the SUB-RECIPIENT shall notify MDEQ of such conflict within five (5) working days of such discovery. If such conflict cannot be resolved to MDEQ’s satisfaction, MDEQ reserves the right to terminate this Agreement per the “Termination for Convenience” clause.

### **37. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and permitted assigns.

### **38. NO THIRD-PARTY BENEFICIARIES**



This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

### **39. EVALUATION**

SUB-RECIPIENT agrees to cooperate with MDEQ by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and this Agreement for a period of ten (10) years after the date on which the Final Reports are provided.

### **40. VENUE**

Venue for the resolution of any dispute, according to Disputes Clause of this Agreement, and any subsequent litigation shall be in Jackson, Hinds County, Mississippi.

### **41. HEADINGS**

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

## **APPENDIX II TO 2 CFR PART 200: CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 USC 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 USC. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 USC. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 USC 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment

of mechanics or laborers must include a provision for compliance with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 USC 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) 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.

(I) Byrd Anti-Lobbying Amendment (31 USC 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal 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 USC 1352. Each tier must 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 non-Federal award.

(J) See §200.322 Procurement of recovered materials.

## **PROCUREMENT OF RECOVERED MATERIALS**

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The prime contractor must comply with federal regulations regarding procurement of recovered materials found at 2 CFR §200.322.

2 CFR §200.322 requires the Project Owner and its contractors to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

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**Documentation of compliance with the following requirements is a matter of contractor responsibility. When subcontracting, the contractor must submit documentation of good faith efforts to meet the project's MBE/WBE requirements before contracted work can commence. (MBE/WBE requirements are outlined below and can be found at 2. C. F. R. §200.321.) Failure on the part of the contractor to submit proper documentation may cause the Owner not to execute or to terminate the contract.**

(a) The prime contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

The prime contractor should note that this requirement mandates two responsibilities. Separate solicitations must be made of minority **and** women's business enterprises.

### **SUBMITTAL OF MINORITY BUSINESS ENTERPRISE AND WOMEN'S BUSINESS ENTERPRISE (MBE/WBE) DOCUMENTATION**

Prior to contract execution, the prime contractor must submit:

- A written certification that no subcontracts will be issued.
- OR -
- The Subcontractor Listing Form detailing all subcontractors that will perform work on the project, including name, contact person, address, phone, and status (MBE, WBE or Non).

If subcontractors will be utilized, the prime contractor must submit the following for subcontracts proposed to be awarded to MBE/WBE enterprises:

- A certification from each MBE and/or WBE firm declaring its status as a MBE or WBE firm. This can be an MDOT, SBA or MDA certification. A self-certification is acceptable, if the certification specifies the basis for MBE/WBE designation (e.g., the business is 51% owned and daily operation is controlled by one or more women or minority owners).

If subcontractors will be utilized, the prime contractor must submit the following for subcontracts proposed to be awarded to Non-MBE/WBE:

- For all subcontracts for which there are capable certified MBE/WBE firms existing to potentially perform the work, letters transmitted to MBE and WBE firms requesting quotes or proposals for specific subcontracting opportunities and encouraging inquiries for further details. Solicitations should have been sent in a timely manner, including allowed response time. (See “Sample Letter from Contractor to MBE/WBE Firms” below.)
- A listing of certified MBE and WBE firms from whom quotes or proposals were received, if any, who were not awarded subcontracts.
- Evidence that each Non-MBE/WBE subcontractor selected for the scope of work, was lower in price than each MBE/WBE proposal (or that there is some other acceptable reason to select the Non-MBE/WBE) and that the scope of work was the same for both the MBE/WBE and Non-MBE/WBE.

**The contractor may utilize the following resources to assist in MBE/WBE affirmative outreach:**

- MDOT Disadvantaged Business Entity (DBE) Website:  
<http://sp.mdod.ms.gov/Civil%20Rights/Pages/DBE.aspx>
- MDA Minority Business Enterprise/Women Business Enterprise (MBE/WBE) Directory:  
<https://minority.mississippi.org/MinorityBusinessDirectory.aspx>

**Should the Prime Contractor intend to later issue a subcontract, the above affirmative steps must be followed and documentation of such submitted to the Owner for review as described under this section.**

## **SAMPLE LETTER FROM CONTRACTOR TO MBE/WBE FIRMS**

### **(CONTRACTOR'S LETTERHEAD)**

[DATE]

[MBE/WBE COMPANY NAME]

[ADDRESS]

[CITY, STATE ZIP]

RE: [NAME OF PROJECT]

Dear [MBE/WBE FIRM]:

Our company has been engaged to support the above referenced project. We are soliciting a proposal from you for the services described below:

[DESCRIBE SCOPE OF WORK FOR SERVICES BEING SOLICITED FROM MBE/WBE FIRM]

Proposals must be submitted by [SUBMITTAL DEADLINE] to be considered.

For further details, you are encouraged to contact [NAME OF OWNER REPRESENTATIVE] by email at [EMAIL ADDRESS] or by telephone at [TELEPHONE NUMBER] during normal business hours.

Sincerely,

[NAME OF REPRESENTATIVE]

[NAME OF COMPANY]

Enclosure: [SCOPE OF WORK]

# MISSISSIPPI EMPLOYMENT PROTECTION ACT OF 2008

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## TITLE 71. LABOR AND INDUSTRY CHAPTER 11. EMPLOYMENT PROTECTION ACT

Miss. Code Ann. § 71-11-1

### § 71-11-1. Legislative findings

The Legislature finds that when illegal immigrants have been sheltered and harbored in this state and encouraged to reside in this state through the benefit of work without verifying immigration status, these practices impede and obstruct the enforcement of federal immigration law, undermine the security of our borders, and impermissibly restrict the privileges and immunities of the citizens of Mississippi. The Legislature further finds that illegal immigration is encouraged when public agencies within this state provide public benefits without verifying immigration status. The Legislature further finds that the Tenth Amendment to the United States Constitution reserves to the states those powers not delegated to the United States by the Constitution. Therefore, the Legislature declares that it is a compelling public interest of this state to discourage illegal immigration by requiring all agencies within this state to fully cooperate with federal immigration authorities in the enforcement of federal immigration laws. The Legislature also finds that other measures are necessary to ensure the integrity of various governmental programs and services.

## TITLE 71. LABOR AND INDUSTRY CHAPTER 11. EMPLOYMENT PROTECTION ACT

Miss. Code Ann. § 71-11-3

§ 71-11-3. Definitions; verification of work eligibility status of new hires; employer liability; exemptions; penalties for violation.

(1) This chapter shall be known as the "Mississippi Employment Protection Act."

(2) The provisions of this section shall be enforced without regard to race, gender, religion, ethnicity or national origin.

(3) For the purpose of this section only, the following words shall have the meanings ascribed herein unless the content clearly states otherwise:

(a) "Employer" is any person or business that is required by federal or state law to issue a United States Internal Revenue Service Form W-2 or Form 1099 to report income paid to employed or contracted personnel in Mississippi.

(b) "Employee" is any person or entity that is hired to perform work within the State of Mississippi and to whom a United States Internal Revenue Service Form W-2 or Form 1099 must be issued.

(c) "Third-party employer" is any person or company that provides workers for another person or company. This includes, but is not limited to, leasing companies and contract employers.

(d) "Status verification system" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996,



Public Law 104-208, Division C, Section 403(a); 8 USC, Section 1324a, and operated by the United States Department of Homeland Security, known as the E-Verify Program.

(e) "Unauthorized alien" means an alien as defined in Section 1324a(h)(3) of Title 8 of the United States Code.

(f) "Public employer" means every department, agency or instrumentality of the state or a political subdivision of the state.

(g) "Subcontractor" means a subcontractor, contract employee, staffing agency or any contractor regardless of its tier.

(4) (a) Employers in the State of Mississippi shall only hire employees who are legal citizens of the United States of America or are legal aliens. For purposes of this section, a legal alien is an individual who was lawfully present in the United States at the time of employment and for the duration of employment, or was permanently residing in the United States under color of law at the time of employment and for the duration of employment.

(b) (i) Every employer shall register with and utilize the status verification system to verify the federal employment authorization status of all newly hired employees.

(ii) No contractor or subcontractor shall hire any employee unless the contractor or subcontractor registers and participates in the status verification system to verify the work eligibility status of all newly hired employees.

(iii) No contractor or subcontractor who enters into a contract with a public employer shall enter into such a contract or subcontract unless the contractor or subcontractor registers and participates in the status verification system to verify information of all newly hired employees.

(c) The provision of this section shall not apply to any contracts entered into on or before July 1, 2008.

(d) It shall be a discriminatory practice for an employer to discharge an employee working in Mississippi who is a United States citizen or permanent resident alien while retaining an employee who the employing entity knows, or reasonably should have known, is an unauthorized alien hired after July 1, 2008, and who is working in Mississippi in a job category that requires equal skill, effort and responsibility, and which is performed under similar working conditions, as defined by 29 USC, Section 206(d) (1), as the job category held by the discharged employee.

(e) An employing entity which, on the date of the discharge in question, was enrolled in and used the status verification system to verify the employment eligibility of its employees in Mississippi hired after July 1, 2008, shall be exempt from liability, investigation or suit arising from any action under this section.

(f) No cause of action for a violation of this section shall lie under any other Mississippi law but shall arise solely from the provisions of this section.

(5) Any employer that complies with the requirements of this section shall be held harmless by the Mississippi Department of Employment Security, provided the employer is not directly involved in the creation of any false documents, and provided that the employer did

not knowingly and willfully accept false documents from the employee.

(6) (a) All third-party employers that conduct business in Mississippi shall register to do business in Mississippi with the Mississippi Department of Employment Security before placing employees into the workforce in Mississippi.

(b) Third-party employers shall provide proof of registration and any participation in the status verification system to any Mississippi employer with whom they do business.

(7) (a) State of Mississippi agencies and political subdivisions, public contractors and public subcontractors and private employers with two hundred fifty (250) or more employees shall meet verification requirements not later than July 1, 2008.

(b) Employers with at least one hundred (100) but less than two hundred fifty (250) employees shall meet verification requirements not later than July 1, 2009.

(c) Employers with at least thirty (30) but less than one hundred (100) employees shall meet verification requirements not later than July 1, 2010.

(d) All employers shall meet verification requirements not later than July 1, 2011.

(e) (i) Any employer violating the provisions of this section shall be subject to the cancellation of any state or public contract, resulting in ineligibility for any state or public contract for up to three (3) years, the loss of any license, permit, certificate or other document granted to the employer by any agency, department or government entity in the State of Mississippi for the right to do business in Mississippi for up to one (1) year, or both.

(ii) The contractor or employer shall be liable for any additional costs incurred by the agencies and institutions of the State of Mississippi, or any of its political subdivisions, because of the cancellation of the contract or the loss of any license or permit to do business in the state.

(iii) Any person or entity penalized under this section shall have the right to appeal to the appropriate entity bringing charges or to the circuit court of competent jurisdiction.

(f) The Department of Employment Security, State Tax Commission, Secretary of State, Department of Human Services and the Attorney General shall have the authority to seek penalties under this section and to bring charges for noncompliance against any employer or employee.

(8) (a) There shall be no liability under this section in the following circumstances:

(i) An employer who hires an employee through a state or federal work program that requires verification of the employee's social security number and provides for verification of the employee's lawful presence in the United States in an employment-authorized immigration status;

(ii) Any candidate for employment referred by the Mississippi Department of Employment Security, if the Mississippi Department of Employment Security has verified the social security number and provides for verification of the candidate's lawful presence in the United States in an employment-authorized immigration status; or

(iii) Individual homeowners who hire workers on their private property for noncommercial purposes, unless required by federal law to do so.

(b) (i) Compliance with the sections of this statute shall not exempt the employer from regulations and requirements related to any federal laws or procedures related to employers.

(ii) This section shall not be construed as an attempt to preempt federal law.

(c) (i) It shall be a felony for any person to accept or perform employment for compensation knowing or in reckless disregard that the person is an unauthorized alien with respect to employment during the period in which the unauthorized employment occurred. Upon conviction, a violator shall be subject to imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, a fine of not less than One Thousand Dollars (\$ 1,000.00) nor more than Ten Thousand Dollars (\$ 10,000.00), or both.

(ii) For purposes of determining bail for persons who are charged under this section, it shall be a rebuttable presumption that a defendant who has entered and remains in the United States unlawfully is deemed at risk of flight for purposes of bail determination.

## EXAMPLE OF E-VERIFY CERTIFICATION LETTER

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Date \_\_\_\_\_

TO: Project Owner  
P. O. Box 12345  
Anytown, MS 12345

RE: Compliance with Mississippi Employment Protection Act of 2008 and the United States  
Illegal Immigration Reform and Immigration Responsibility Act of 1996 (E-Verify)

Project Name \_\_\_\_\_  
Project Number \_\_\_\_\_

The purpose of this letter is to inform you that \_\_\_\_\_ (Contractor and/or Subcontractor's  
Company Name) is in compliance with the Mississippi Employment Protection Act of 2008  
as described in Senate Bill 2988 of the 2008 Regular Session of the Mississippi Legislature and  
the United States Illegal Immigration Reform and Immigration Responsibility Act of 1996. Our  
E-Verify registration number is \_\_\_\_\_.

Attached, for your review, is a copy of the documentation showing our company's  
participation in the E-Verify program and upon request, copies of employee's certifications will  
be provided as they are kept in the employee's personnel file.

Our company understands if compliance with the above-mentioned Act is not followed  
consequences may occur as contemplated in that Act.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

President of Company

**If you are not already enrolled you may enroll by going to the E-Verify Web site at  
[www.uscis.gov/e-verify](http://www.uscis.gov/e-verify) follow the directions and tutorial.**

## SUBCONTRACTOR LISTING FORM

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The prime contractor must submit this form to the Owner prior to contract execution and must update it for each subcontractor performing any work resulting from this contract. If additional lines are needed, this form may be duplicated.

| <b>Subcontractor Name<br/>and Contact Person</b> | <b>Subcontractor Address<br/>and Phone Number</b> | <b>Subcontractor<br/>DUNS</b> | <b>MBE<br/>(Y/N)</b> | <b>WBE<br/>(Y/N)</b> |
|--------------------------------------------------|---------------------------------------------------|-------------------------------|----------------------|----------------------|
|                                                  |                                                   |                               |                      |                      |
|                                                  |                                                   |                               |                      |                      |
|                                                  |                                                   |                               |                      |                      |
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|                                                  |                                                   |                               |                      |                      |

**CITY OF GAUTIER  
Business Agenda Item #5  
Fact Sheet**

**Council Meeting:**  
**Title:**

**December 3, 2019**  
**Resolution authorizing and directing the issuance of  
Combined Utility System Revenue Bonds, Series 2019  
not to exceed \$6,000,000.**

**Introduced by:**  
**Contact Person/Telephone**

**City Manager 497-8000 Ext. 306**

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**Summary Explanation: Resolution authorizing and directing the issuance of Combined Utility  
System Revenue Bonds, Series 2019 not to exceed \$6,000,000.**

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input type="checkbox"/>            |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract/Agreement</b>      | <input type="checkbox"/>            |
| <b>Minutes</b>                 | <input type="checkbox"/>            |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input checked="" type="checkbox"/> |
| <b>Other</b>                   | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**

**Approval**

|                 |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
|-----------------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|
| Motion Made by: |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
| Torjusen        | <input type="checkbox"/> | Martin | <input type="checkbox"/> | George | <input type="checkbox"/> | Jackson | <input type="checkbox"/> | Vaughan | <input type="checkbox"/> | Anderson | <input type="checkbox"/> | Colledge | <input type="checkbox"/> |

|                 |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
|-----------------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|
| Second Made by: |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
| Torjusen        | <input type="checkbox"/> | Martin | <input type="checkbox"/> | George | <input type="checkbox"/> | Jackson | <input type="checkbox"/> | Vaughan | <input type="checkbox"/> | Anderson | <input type="checkbox"/> | Colledge | <input type="checkbox"/> |

| <b>Voted as follows:</b> |                 | <b>Ayes</b>              | <b>Nays</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | <b>Torjusen</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | <b>Martin</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | <b>George</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | <b>Jackson</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | <b>Vaughan</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | <b>Anderson</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | <b>Colledge</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

There came on for consideration the matter of the issuance of combined utility system revenue bonds of the City of Gautier, Mississippi and, after a discussion of the subject matter, Council Member \_\_\_\_\_ offered and moved the adoption of the following resolution:

**RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF GAUTIER, MISSISSIPPI AUTHORIZING AND DIRECTING THE ISSUANCE OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2019 OF THE CITY OF GAUTIER, MISSISSIPPI, IN THE TOTAL AGGREGATE PRINCIPAL AMOUNT OF SIX MILLION DOLLARS (\$6,000,000) FOR THE PURPOSES SET FORTH IN SECTIONS 21-27-11 *ET SEQ.*, MISSISSIPPI CODE OF 1972, AS AMENDED AND SUPPLEMENTED, INCLUDING, BUT NOT LIMITED TO, (A) THE IMPROVEMENT, REPAIR, AND EXTENSION OF THE CITY'S COMBINED WATERWORKS, WATER SUPPLY, SEWERAGE, AND SEWER DISPOSAL FACILITIES, (B) FUNDING A DEBT SERVICE RESERVE FUND FOR SAID REVENUE BONDS, AND (C) PAYING THE COSTS OF ISSUANCE OF SAID REVENUE BONDS; AWARDING THE SALE OF SAID REVENUE BONDS; PRESCRIBING THE FORM AND DETAILS OF SAID REVENUE BONDS; PROVIDING CERTAIN COVENANTS OF SAID CITY IN CONNECTION WITH SAID REVENUE BONDS; DIRECTING THE PREPARATION, EXECUTION AND DELIVERY OF SAID REVENUE BONDS; PROVIDING FOR THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES TO BE DERIVED FROM THE OPERATION OF SAID SYSTEM IN AN AMOUNT SUFFICIENT TO PAY THE COST OF THE OPERATION AND MAINTENANCE THEREOF AND TO PAY THE PRINCIPAL OF AND INTEREST ON SAID REVENUE BONDS; MAKING PROVISION FOR CERTAIN FUNDS IN CONNECTION WITH SAID SYSTEM AND SAID REVENUE BONDS; MAKING PROVISION FOR MAINTAINING THE TAX-EXEMPT STATUS OF SAID REVENUE BONDS; AUTHORIZING THE PREPARATION AND DISTRIBUTION OF A FINAL OFFICIAL STATEMENT IN CONNECTION WITH SAID REVENUE BONDS; AND FOR RELATED PURPOSES.**

**WHEREAS**, the Mayor and City Council of the City of Gautier, Mississippi (the "Governing Body"), acting for and on behalf of the City of Gautier, Mississippi (the "City"), is authorized under the provisions of Sections 21-27-11 *et seq.*, Mississippi Code of 1972, as amended and supplemented from time to time (the "Act"), to issue revenue bonds of the City in such amounts as it may find necessary and proper and for the purposes set forth in the Act, including, but not limited to, the improvement, repair, and extension of the City's combined waterworks, water supply, sewerage, and sewer disposal facilities (the "System"), funding a debt service reserve fund for such revenue bonds and paying the costs of the sale and issuance of such revenue bonds (the "Project"); and

**WHEREAS**, the Governing Body has previously caused an estimate to be made of the costs of the Project by competent engineers employed by the City from which estimates the

Governing Body finds and determines that the contemplated costs thereof will not exceed Ten Million Dollars (\$10,000,000); and

**WHEREAS**, the Project is to be done substantially in accordance with plans and specifications prepared by competent engineers employed by the City and approved by the Governing Body; and

**WHEREAS**, as a result of a study done by such competent engineers, the Governing Body finds and determines that the estimated life of the Project will be at least twenty-five (25) years; and

**WHEREAS**, the Project is in accordance with the provisions of the Act; and

**WHEREAS**, as a result of the findings in the study of such competent engineers, the Project and the costs thereof are economically feasible; and

**WHEREAS**, by resolution adopted on November 21, 2017 (the "Intent Resolution"), the Governing Body found and determined that it is necessary and proper for the City to finance the Project through the issuance, in one or more series, of revenue bonds of the City pursuant to the Act, in a total aggregate principal amount not to exceed Ten Million Dollars (\$10,000,000); and

**WHEREAS**, as required by the Act, the Intent Resolution was published in *The Mississippi Press*, a newspaper having a general circulation in the City, and being a qualified newspaper under the provisions of Section 13-3-31, Mississippi Code of 1972, as amended, once a week for at least three (3) consecutive weeks, the last such publication having been made more than ten (10) days prior to January 2, 2018, said resolution having been published on December 6, 13 and 20, 2017; and

**WHEREAS**, by resolution adopted on January 2, 2018, the Governing Body found and determined that the Intent Resolution was duly published as required by law, that no protest or objection of any kind or character against the issuance of such revenue bonds or the purpose for which they are to be issued was presented and that the Governing Body is authorized and empowered by the provisions of the Act to issue revenue bonds without an election on the question thereof within two (2) years from January 2, 2018; and

**WHEREAS**, on June 1, 2018, the City issued its \$4,000,000 Combined Utility System Revenue Bonds, Series 2018 to finance a portion of the costs of the Projects; and

**WHEREAS**, by resolution adopted on November 5, 2019 (the "Sale Resolution"), the Governing Body authorized and approved the issuance of the City's Combined Utility System Revenue Bonds, Series 2019 (the "Series 2019 Bonds"), in an aggregate principal amount not to exceed Six Million Dollars (\$6,000,000) to raise additional money for the Project, approved the form of and authorized the publication of a Notice of Bond Sale (the "Notice of Sale") in connection with the Series 2019 Bonds, and approved the form of and authorized the distribution of a Preliminary Official Statement (the "Preliminary Official Statement") in connection with the Series 2019 Bonds; and



**WHEREAS**, pursuant to the Sale Resolution and the Act, the Notice of Sale was published in *The Mississippi Press*, a newspaper having a general circulation in the City and qualified under the provisions of Section 13-3-31, Mississippi Code of 1972, as amended, on November 22 and November 29, 2019, in the form attached hereto as Exhibit A and made a part hereof; and

**WHEREAS**, pursuant to the Sale Resolution, the Preliminary Official Statement and an Official Bid Form (the "Bid Form") were distributed to potential purchasers of the Series 2019 Bonds in the forms attached hereto as Exhibit B and made a part hereof; and

**WHEREAS**, at or prior to the hour of 4:30 p.m. on this 3<sup>rd</sup> day of December, 2019, there were filed with the City, \_\_\_\_\_ (\_\_\_\_) sealed bids on the Bid Form, copies of which are attached hereto as Exhibit C and made a part hereof, for the purchase of the Series 2019 Bonds pursuant to the terms and provisions of the Notice of Sale, as follows:

**Name of Bidder**

**Net Interest Rate**

and each of said bids was accompanied by a cashier's check, certified check, or exchange, issued or certified by a bank located in the State of Mississippi, in the amount of One Hundred Twenty Thousand Dollars (\$120,000) as evidence of the good faith of each of said bidders; and

**WHEREAS**, each of said bids has been read at length and considered by the Governing Body; and

**WHEREAS**, at the direction of the Governing Body, Government Consultants, Inc. (the "Municipal Advisor") has determined which of said bids produced the lowest net interest rate (as defined in the Notice of Sale); and

**WHEREAS**, the bid of \_\_\_\_\_ (the "Purchaser") produces the lowest net interest rate for the Series 2019 Bonds which rate is \_\_\_\_\_%; and

**WHEREAS**, the best interest of the City will be served by the acceptance of the bid of the Purchaser; and

**WHEREAS**, the issuance of the Series 2019 Bonds for the purpose of providing funds to finance the Project will result in a substantial public benefit to the citizens of the City; and

**WHEREAS**, the Series 2019 Bonds will be secured by a lien on and payable solely from the Net Revenues (as hereinafter defined) of the System; and

**WHEREAS**, the Series 2019 Bonds will be issued on a parity with the City's \$3,500,000 Promissory Note (Gautier, Mississippi Combined Utility System Revenue Project), dated August 13, 2013, securing the \$3,500,000 Mississippi Development Bank Special Obligation Bonds, Series 2013 (Gautier, Mississippi Combined Utility System Revenue Project), dated August 13,

2013, and the City's \$4,000,000 Combined Utility System Revenue Bonds, Series 2018, dated June 1, 2018 (together, the "Utility Bonds"), which are also secured by the Net Revenues of the System; and

**WHEREAS**, it is necessary, proper and economically feasible that the City issue the Series 2019 Bonds pursuant to the Act for the purposes herein stated and under the procedures hereinafter set forth and as provided by law; and

**WHEREAS**, the amount of the Series 2019 Bonds, when added to the outstanding indebtedness of the City, will not exceed any constitutional or statutory limitation of indebtedness; and

**WHEREAS**, there are no other available funds on hand or from regular sources of income for such purposes; and

**WHEREAS**, the Governing Body now finds and determines that it is necessary, advisable and in the public interest that the Series 2019 Bonds be issued as hereinafter provided.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GAUTIER, MISSISSIPPI, ACTING FOR AND ON BEHALF OF THE CITY, AS FOLLOWS:**

**SECTION 1.** Each and all of the facts and findings set forth in the premises clauses of this Bond Resolution are hereby found and determined to be true and accurate and are incorporated herein by this reference thereto as though set forth again in words and figures.

**SECTION 2.** In addition to any words and terms elsewhere defined herein, the following words and terms shall have the following meanings, unless some other meaning is plainly intended:

"Act" shall mean Sections 21-27-11 *et seq.*, Mississippi Code of 1972, as amended and supplemented from time to time.

"Additional Bonds" shall mean additional bonds issued hereafter on parity with the Series 2019 Bonds and the Utility Bonds and secured by Net Revenues of the System.

"Bond Counsel" shall mean Butler Snow LLP, Ridgeland, Mississippi.

"Bond Resolution" shall mean this resolution authorizing and directing the issuance of the Series 2019 Bonds.

"Bond Year" shall mean the one-year period (or shorter period beginning on the date of issue of the Series 2019 Bonds or ending on the final maturity date of the Series 2019 Bonds) ending at the close of business on the day selected by the City. If no day is selected by the City before the earlier of the final maturity date of the Series 2019 Bonds or the date that is five years after the date of issue of the Series 2019 Bonds, each Bond Year will end on each anniversary of the date of issue of the Series 2019 Bonds.

"Bonds" shall mean the Series 2019 Bonds, the Utility Bonds and any Additional Bonds issued on parity with the Series 2019 Bonds and the Utility Bonds and secured by the Net Revenues of the System.

"Business Day" shall mean any day other than (a) a Saturday, (b) a Sunday, (c) any other day on which banking institutions in New York, New York or Gautier, Mississippi, are authorized or required not to be open for the transaction of regular banking business, (d) any day the City Hall in Gautier, Mississippi is closed, or (e) a day on which the New York Stock Exchange is closed.

"City" shall mean the City of Gautier, Mississippi.

"Clerk" shall mean the City Clerk of the City.

"Closing" shall mean the date of the delivery of the Series 2019 Bonds.

"Code" shall mean the Internal Revenue Code of 1986, as amended, supplemented or superseded and the Regulations promulgated thereunder.

"Consulting Engineers" shall mean any engineer or engineering firm employed by the City in connection with the System or for the purposes set out in this Bond Resolution.

"Costs of the Project" shall mean the costs of the acquisition, construction and equipping of the Project and, without intending thereby to limit or restrict any proper definition of such term under the provisions of the Act or this Bond Resolution, shall include the following:

(a) obligations incurred for labor and materials, for contractors, builders and materialmen in connection with construction, for machinery and equipment, for the restoration or relocation of property damaged or destroyed in connection with such construction, for the removal or relocation of structures and for the clearing of lands;

(b) the cost of acquiring by purchase, if such purchase shall be deemed expedient, and the amount of any deposit in court or award or final judgment in or any settlement or compromise of any proceeding to acquire by eminent domain, lands, property, property rights, rights-of-way, easements, franchises, licenses, options and partial payments thereon, the cost of demolishing or removing or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, and the amount of any damages incident to or consequent upon the construction and operation of the Project;

(c) taxes or other municipal or governmental charges lawfully levied or assessed during construction upon the Project or any property acquired therefor, and premiums on insurance (if any) in connection with the Project during construction;

(d) the cost of borings and other preliminary investigations to determine foundation or other conditions, expenses necessary or incident to determining the feasibility or practicability of constructing the Project, and fees and expenses of engineers for making surveys and estimates

of costs and of revenues and other estimates and for preparing plans and specifications and supervising construction, as well as for the performance of all other duties of engineers set forth in this Bond Resolution in relation to the construction of the Project and the issuance of the Series 2019 Bonds;

(e) expenses of administration properly chargeable to the Project, expenses of officers of the City in connection with the Series 2019 Bonds, legal expenses and fees, fees and expenses of any financial advisor or consultant, financing charges, capitalized interest, costs of audits and of preparing and issuing the Series 2019 Bonds, payments in connection with the 2019 Debt Service Reserve Fund, the 2019 Contingency Fund, the 2019 Depreciation Fund and all other items of expense reasonably incurred incident to the acquisition, construction and equipping of the Project, the financing thereof, the placing of the same in operation (including the initial premiums on any insurance required or obtained under the provisions of this Bond Resolution) and the acquisition of franchises and interest therefor, including abstracts of title, title insurance, costs of surveys and other expenses in connection with such acquisition; and

(f) any obligation or expense heretofore or hereafter incurred and any amount heretofore or hereafter advanced by the City for any of the foregoing purposes.

"Current Expenses" shall mean the reasonable and necessary current expenses of maintenance, repair and operation of the System and shall include, without limiting the generality of the foregoing, expenses not annually recurring, premiums for insurance, administrative and engineering expenses relating to maintenance, repair and operation, fees and expenses of the Paying Agent, legal expenses, taxes lawfully imposed on the System, reasonable payments to pension or retirement funds for employees of the System and any other expense of the System required or permitted to be paid by the City under the provisions of this Bond Resolution or by law, but shall not include any allowance for depreciation or transfers to the credit of the 2019 Debt Service Fund, the 2019 Debt Service Reserve Fund, the 2019 Depreciation Fund or the 2019 Contingent Fund.

"Debt Service Reserve Fund Requirement" shall mean the lesser of the following: (i) the maximum amount of principal and interest becoming due in the current or any future Bond Year, on all Series 2019 Bonds then outstanding; (ii) 125% of average annual debt service on the Series 2019 Bonds; or (iii) 10% of the stated principal amount of the Series 2019 Bonds, or if the Series 2019 Bonds have more than a de minimis amount (as defined in Section 1.148-1(b) of the Treasury Regulations) of original issue discount or premium, 10% of the issue price (as defined in Section 1.148-1(b) of the Treasury Regulations) of the Series 2019 Bonds), which Debt Service Reserve Fund Requirement may be funded with cash or a Reserve Fund Credit Facility; provided, however, that upon initial issuance of the Series 2019 Bonds, the Debt Service Reserve Fund Requirement will mean the amount set forth in (i) hereinabove and in future years if the amount of the Debt Service Reserve Fund Requirement should equal an amount in excess of the lesser of (i), (ii) and (iii) above, the funds held in the 2019 Debt Service Reserve Fund will not be invested at a yield in excess of the yield on the Series 2019 Bonds.

"Direct Participant" means a broker-dealer, bank or other financial institution for which the Securities Depository holds Series 2019 Bonds as a securities depository.

"DTC" shall mean The Depository Trust Company, New York, New York.

"DTC Participant" shall mean any participant for whom DTC is a Securities Depository Nominee.

"Fiscal Year" shall mean a period beginning on October 1 in any year and ending on September 30 of the following year.

"Governing Body" shall mean the Mayor and City Council of the City.

"Indirect Participant" shall mean a broker-dealer, bank or other financial institution for which the Securities Depository holds Series 2019 Bonds as a securities depository through a Direct Participant.

"Interest Payment Date" shall mean any date on which interest is payable on the Series 2019 Bonds, being each June 1 and December 1, commencing December 1, 2020.

"Mayor" shall mean the Mayor of the City.

"Municipal Advisor" shall mean Government Consultants, Inc., Madison, Mississippi, as independent registered municipal advisor to the City.

"Net Revenues" shall mean all Revenues remaining after payment of Current Expenses and debt service on the SRF Loans outstanding at the time of the issuance of the Series 2019 Bonds.

"Operation and Maintenance Fund" shall mean the fund by that name held by the City for the operation and maintenance of the System.

"Paying Agent" shall mean any bank, trust company or other financial institution designated by the Governing Body to make payments of the principal of and interest on the Series 2019 Bonds, and to serve as registrar and transfer agent for the registration of owners of the Series 2019 Bonds, and for the performance of other duties as may be specified by the Governing Body.

"Person" shall mean an individual, partnership, corporation, trust or unincorporated organization and a government or agency or political subdivision thereof.

"Principal and Interest Requirements" for any Bond Year shall mean the sums sufficient for the payment of the principal of and interest on the Series 2019 Bonds, the Utility Bonds and any Additional Bonds which will mature and accrue during such period.

"Prior Bond Resolutions" shall collectively mean the 2012 Bond Resolution, the 2013 Loan Agreement and the 2018 Bond Resolution.

"Project" shall mean (a) the improvement, repair and extension of the System, (b) the funding of the 2019 Debt Service Reserve Fund, and (c) the payment of the costs of issuance of the Series 2019 Bonds.

"Purchaser" shall mean \_\_\_\_\_, the successful bidder for the Series 2019 Bonds.

"Record Date" shall mean, as to interest payments, the 15<sup>th</sup> day of the month preceding the dates set for payment of interest on the Series 2019 Bonds and, as to payments of principal, the 15<sup>th</sup> day of the month preceding the maturity date thereof.

"Record Date Registered Owner" shall mean the Registered Owner as of the Record Date.

"Redemption Date" shall mean the date on which any Series 2019 Bonds are called for redemption.

"Redemption Price" shall mean the principal amount, plus the applicable premium, if any, and interest payable on the Series 2019 Bonds upon redemption prior to maturity.

"Registered Owner" shall mean the person whose name shall appear in the registration records of the City maintained by the Paying Agent.

"Resolution" shall mean collectively this Bond Resolution and the Prior Resolutions.

"Revenue Fund" shall mean the fund by that name held by the City for the deposit of Revenues of the System and created pursuant to the 2012 Bond Resolution.

"Revenues" shall mean all payments, proceeds, fees, charges, rents and all other income derived by or for the account of the City from its ownership and operation of the System, excluding all acreage, front-footage, assessment and similar fees and charges derived by the City in connection with the provision of or payment for capital improvements constituting a part of the System.

"Securities Depository" shall mean The Depository Trust Company and any substitute for or successor to such securities depository selected by the City to act as the securities depository maintaining a book-entry transfer system for the Series 2019 Bonds.

"Securities Depository Nominee" shall mean the Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the registration records the Series 2019 Bonds to be delivered to such Securities Depository during the continuation with such Securities Depository of participation in its Book-Entry System.

"Series 2012 Bonds" shall mean the \$9,185,000 (original principal amount) City of Gautier, Mississippi Combined Utility System Revenue Refunding Bonds, Series 2012, dated May 31, 2012, which have been paid in full.

"Series 2018 Bonds" shall mean the \$4,000,000 (original principal amount) City of Gautier, Mississippi Combined Utility System Revenue Bonds, Series 2018, dated June 1, 2018.

"Series 2019 Bonds" shall mean the Combined Utility System Revenue Bonds, Series 2019, of the City in the aggregate principal amount of \$6,000,000, to be dated the date of delivery thereof.

"SRF Loans" shall mean the State Revolving Fund Loans, existing on the date of issuance of the Series 2019 Bonds, from the State to the City under Sections 49-17-1 *et seq.*, Mississippi Code of 1972, as amended and supplemented from time to time, which SRF Loans have a lien on Revenues of the System; however, the debt service for the SRF Loans is collected by the Mississippi Department of Revenue by diverting sales tax collections prior to remittance of the sales tax to the City and then subsequently reimbursed to the City from the Revenues of the System.

"State" shall mean the State of Mississippi.

"System" shall mean the combined waterworks, water supply, sewerage, and sewer disposal facilities of the City, including any enlargement and extension thereof.

"2012 Bond Resolution" shall mean the resolution adopted by the Governing Body on April 24, 2012, authorizing and directing the issuance of the Series 2012 Bonds.

"2013 Debt Service Fund" shall mean the fund created and established under the 2013 Loan Agreement for the payment of debt service on the 2013 Note and bonds issued on parity therewith, including the Series 2019 Bonds.

"2013 Loan Agreement" shall mean the Loan Agreement by and between the Mississippi Development Bank and the City, dated August 13, 2013, as amended or supplemented, pursuant to which the City borrowed the proceeds of the \$3,500,000 (original principal amount) Mississippi Development Bank Special Obligation Bonds, Series 2013 (Gautier, Mississippi Combined Utility System Revenue Project), dated August 13, 2013, which are secured by the 2013 Note.

"2013 Note" shall mean the \$3,500,000 (original principal amount) City of Gautier, Mississippi Promissory Note (Gautier, Mississippi Combined Utility System Revenue Project), dated August 13, 2013, securing the \$3,500,000 (original principal amount) Mississippi Development Bank Special Obligation Bonds, Series 2013 (Gautier, Mississippi Combined Utility System Revenue Project), dated August 13, 2013.

"2018 Bond Resolution" shall mean the resolution adopted by the Governing Body on April 3, 2018, authorizing and directing the issuance of the Series 2018 Bonds.

"2018 Construction Account" shall mean the bank account created to hold the moneys deposited in the 2018 Construction Fund established pursuant to the 2018 Bond Resolution.

"2018 Contingent Account" shall mean the bank account created to hold the moneys deposited in the 2018 Contingent Fund established pursuant to the 2018 Bond Resolution.

"2018 Debt Service Fund" shall mean the fund created and established under the 2018 Bond Resolution for the Series 2018 Bonds and bonds issued on parity therewith, including the Series 2019 Bonds.

"2018 Depreciation Account" shall mean the bank account created to hold the moneys deposited in the 2018 Depreciation Fund established pursuant to the 2018 Bond Resolution.

"2019 Debt Service Fund" shall mean the debt service fund provided for in Section 17 of this Bond Resolution.

"2019 Contingent Fund" shall mean the contingency fund provided for in Section 17 of this Bond Resolution.

"2019 Debt Service Reserve Fund" shall mean the debt service reserve fund provided for in Section 17 of this Bond Resolution.

"2019 Depreciation Fund" shall mean the depreciation fund provided for in Section 17 of this Bond Resolution.

"Utility Bonds" shall mean the 2013 Note and the Series 2018 Bonds.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words importing persons shall include firms, partnerships, corporations, trusts and unincorporated organizations. Unless the context shall otherwise indicate, words and terms herein defined shall be equally applicable to the plural as well as the singular form of any of such words and terms.

**SECTION 3.** Proceeding under the authority of the Act and this Bond Resolution, the Series 2019 Bonds be, and are hereby, authorized, ordered and directed to be issued in the principal amount of Six Million Dollars (\$6,000,000) to raise money for the Project. The principal of and the interest on the Series 2019 Bonds shall be payable in accordance with and as authorized by this Bond Resolution and the Act.

**SECTION 4.** (a) The bid of the Purchaser be, and is hereby, declared to be the best responsible bid and the one offering to purchase the Series 2019 Bonds at such prices and at such rates of interest as will produce the lowest net interest rate on the Series 2019 Bonds and said bid be, and is hereby accepted subject to the conditions of the Notice of Sale and this Bond Resolution.

(b) The Mayor and the Clerk be, and are hereby, authorized and directed to accept the bid of the Purchaser, and the good faith check received with said bid, in the amount of One Hundred Twenty Thousand Dollars (\$120,000), shall be collected, deposited and invested by the City in accordance with the terms of the Notice of Sale and the provisions of the Act, and shall be applied in part payment for the Series 2019 Bonds to secure the City from any loss resulting from the failure of the Purchaser to comply with the terms of its bid. All other good faith checks shall be returned to the unsuccessful bidders by the Clerk.

(c) The Mayor and the Clerk, be and are hereby, authorized to endorse upon the Bid Form of the Purchaser, for and on behalf of the City, a suitable notation as evidence of the acceptance of the bid of the Purchaser and to do all other acts and things required to evidence acceptance of the successful bid of the Purchaser.



**SECTION 5.** (a) The Series 2019 Bonds shall be registered as to both principal and interest; shall be dated the date of delivery thereof; shall be issued in the denomination of \$5,000 each, or integral multiples thereof up to the amount of a single maturity; shall be numbered from one upward in the order of issuance; shall bear interest (calculated on the basis of a year of 360 days and twelve 30-day months) from the date thereof at the following rates per annum in accordance with the bid of the Purchaser, payable semiannually on June 1 and December 1 of each year (each an "Interest Payment Date"), commencing December 1, 2020; and shall mature and become due and payable, with option of prior payment, on December 1 in the years and principal amounts, as follows:

| <b>Year</b> | <b>Principal<br/>Amount</b> | <b>Interest<br/>Rate</b> |
|-------------|-----------------------------|--------------------------|
| 2020        | \$205,000                   |                          |
| 2021        | 215,000                     |                          |
| 2022        | 220,000                     |                          |
| 2023        | 230,000                     |                          |
| 2024        | 240,000                     |                          |
| 2025        | 250,000                     |                          |
| 2026        | 260,000                     |                          |
| 2027        | 265,000                     |                          |
| 2028        | 280,000                     |                          |
| 2029        | 290,000                     |                          |
| 2030        | 300,000                     |                          |
| 2031        | 310,000                     |                          |
| 2032        | 320,000                     |                          |
| 2033        | 335,000                     |                          |
| 2034        | 345,000                     |                          |
| 2035        | 360,000                     |                          |
| 2036        | 375,000                     |                          |
| 2037        | 385,000                     |                          |
| 2038        | 400,000                     |                          |
| 2039        | 415,000                     |                          |

(b) The Series 2019 Bonds maturing December 1, 2030 and thereafter will be subject to redemption prior to their respective maturities, at the option of the City, on and after December 1, 2029, either in whole or in part on any date (as selected by the City among maturities and by lot within each maturity), at the principal amount thereof, together with the interest accrued thereon to the date fixed for redemption and without premium.

At least thirty (30) days before the Redemption Date of any Series 2019 Bonds, the Clerk shall cause a notice of any such redemption, either in whole or in part, signed by the Clerk, (a) to be filed with the Paying Agent and (b) to be mailed, postage prepaid, to all Record Date Registered Owners at their addresses as they appear on the registration records herein provided for, but failure so to file or mail any such notice shall not affect the validity of the proceedings for such redemption. Each such notice shall set forth the Redemption Date, the Redemption Price, the place or places at which payment shall be made and, if less than all of the Series 2019

Bonds of any one maturity shall be called for redemption and the distinctive numbers and letters, if any, of such Series 2019 Bonds to the redeemed.

On the Redemption Date, notice having been given in the manner and under the conditions hereinabove provided, the Series 2019 Bonds so called for redemption shall become due and payable at the Redemption Price of such Series 2019 Bonds on such date, and, if moneys for payment of such Redemption Price are held in a separate account by the Paying Agent for the Record Date Registered Owners of the Series 2019 Bonds to be redeemed, as provided in this Bond Resolution, interest on the Series 2019 Bond so called for redemption shall cease to accrue, such Series 2019 Bonds shall cease to be entitled to any benefit or security under this Bond Resolution, and the Record Date Registered Owners of such Series 2019 Bonds shall have no rights in respect thereof except to receive payment of the Redemption Price thereof.

**SECTION 6.** (a) When the Series 2019 Bonds shall have been validated and executed as herein provided, they shall be registered as an obligation of the City in the office of the Clerk in records maintained for that purpose, and the Clerk shall cause to be imprinted upon the reverse side of each of the Series 2019 Bonds, over her manual or facsimile signature and manual or facsimile seal, her certificate in substantially the form set out in Section 9.

(b) The Series 2019 Bonds shall be executed by the manual or facsimile signature of the Mayor and countersigned by the manual or facsimile signature of the Clerk, with the seal of the City imprinted or affixed thereto; provided, however, all signatures and seals appearing on the Series 2019 Bonds, other than the signatures of an authorized officer of the Paying Agent hereafter provided for, may be facsimile and shall have the same force and effect as if manually signed or impressed. In case any official of the City whose signature or a facsimile of whose signature shall appear on the Series 2019 Bonds shall cease to be such official before the delivery or reissuance thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such official had remained in office until delivery or reissuance.

(c) The Series 2019 Bonds shall be delivered to the Purchaser upon payment of the purchase price therefor in accordance with the terms and conditions of the Notice of Sale and this Bond Resolution together with a complete certified transcript of the proceedings had and done in the matter of the authorization, issuance, sale and validation of the Series 2019 Bonds, and the final, unqualified approving opinion of Bond Counsel, which opinion shall be imprinted on the reverse of each of the Series 2019 Bonds.

(d) Prior to or simultaneously with the delivery by the Paying Agent of the Series 2019 Bonds, the City shall file with the Paying Agent:

(i) a copy, certified by the Clerk, of the transcript of proceedings of the Governing Body in connection with the authorization, issuance, sale and validation of the Series 2019 Bonds; and

(ii) an authorization to the Paying Agent, signed by the Mayor, to authenticate and deliver the Series 2019 Bonds to the Purchaser.

(e) The Paying Agent shall authenticate the Series 2019 Bonds and deliver them to the Purchaser upon payment of the purchase price of the Series 2019 Bonds to the City.

(f) Series 2019 Bonds, blank as to denominations, rate of interest, date of maturity and CUSIP number and sufficient in quantity in the judgment of the City to meet the reasonable transfer and reissuance needs on the Series 2019 Bonds, shall be printed and delivered to the Paying Agent in generally-accepted format, and held by the Paying Agent until needed for transfer or reissuance, whereupon the Paying Agent shall imprint the appropriate information as to denomination, rate of interest, date of maturity and CUSIP number prior to the registration, authentication and delivery thereof to the transferee. Subject to the approval of the Governing Body, the Paying Agent is hereby authorized to have printed from time to time as necessary additional Series 2019 Bonds bearing the facsimile seal of the City and facsimile signatures of the Persons who were the officials of the Governing Body as of the date of original issue of the Series 2019 Bonds.

**SECTION 7.** (a) The City authorizes the Mayor and City Clerk to appoint the Paying Agent for the Series 2019 Bonds after receiving the recommendation of the successful bidder subject to the following conditions. The Paying Agent shall be a bank, trust company, or national banking association located within the State having Federal Deposit Insurance Corporation insurance of its accounts, duly authorized to exercise corporate trust powers and subject to examination by and in good standing with the federal and state regulatory authorities under the jurisdiction of which it falls. So long as any of the Series 2019 Bonds shall remain outstanding, the City shall maintain with the Paying Agent records for the registration and transfer of the Series 2019 Bonds. The Paying Agent is hereby appointed registrar for the Series 2019 Bonds, in which capacity the Paying Agent shall register in such records and permit to be transferred thereon, under such reasonable regulations as may be prescribed, any of the Series 2019 Bonds entitled to registration or transfer.

(b) The City shall pay or reimburse the Paying Agent reasonable fees for the performance of the services normally rendered and the incurring of normal expenses reasonably and necessarily paid as are customarily paid to paying agents, transfer agents and bond registrars, subject to agreement between the City and the Paying Agent. Fees and reimbursements for extraordinary services and expenses, so long as not occasioned by the negligence, misconduct or willful default of the Paying Agent, shall be made by the City on a case-by case basis, subject, where not prevented by emergency or other exigent circumstances, to the prior written approval of the Governing Body.

(c) (i) A Paying Agent may at any time resign and be discharged of its duties and obligations as Paying Agent by giving at least sixty (60) days written notice to the City and may be removed as Paying Agent at any time by resolution of the Governing Body delivered to the Paying Agent. Such resolution shall specify the date on which such removal shall take effect and the name and address of the successor Paying Agent, and shall be transmitted to the Paying Agent being removed within a reasonable time prior to the effective date thereof; provided, however, that no resignation or removal of a Paying Agent shall become effective until a successor Paying Agent has been appointed pursuant to this Bond Resolution.

(ii) Upon receiving notice of the resignation of a Paying Agent, the City shall promptly appoint a successor Paying Agent by resolution of the Governing Body. Any appointment of a successor Paying Agent shall become effective upon acceptance of appointment by the successor Paying Agent. If no successor Paying Agent shall have been so appointed and have accepted appointment within thirty (30) days after the notice of resignation, the resigning Paying Agent may petition any court of competent jurisdiction for the appointment of a successor Paying Agent, which court may thereupon, after such notice as it may deem appropriate, appoint a successor Paying Agent.

(iii) In the event of a change of Paying Agents, the predecessor Paying Agent shall cease to be custodian of any funds held pursuant to this Bond Resolution in connection with its role as such Paying Agent, and the successor Paying Agent shall become such custodian; provided, however, that before any such delivery is required to be made, all fees, advances and expenses of the retiring or removed Paying Agent shall be fully paid. Every predecessor Paying Agent shall deliver to its successor Paying Agent all records of account, registration records, lists of Registered Owners and all other records, documents and instruments relating to its duties as such Paying Agent.

(iv) Any successor Paying Agent appointed under the provisions hereof shall be a banking corporation, trust company or national banking association having Federal Deposit Insurance Corporation insurance of its accounts, duly authorized to exercise corporate trust powers and subject to examination by and in good standing with the federal and/or state regulatory authorities under the jurisdiction of which it falls.

(v) Every successor Paying Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor Paying Agent and to the City an instrument in writing accepting such appointment hereunder, and thereupon such successor Paying Agent, without any further act, shall become fully vested with all the rights, immunities and powers, and subject to all the duties and obligations, of its predecessor.

(vi) Should any transfer, assignment or instrument in writing be required by any successor Paying Agent from the City to more fully and certainly vest in such successor Paying Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Paying Agent, any such transfer, assignment and written instrument shall, on request, be executed, acknowledged and delivered by the City.

(vii) The City will provide any successor Paying Agent with certified copies of all resolutions, orders and other proceedings adopted by the Governing Body relating to the Series 2019 Bonds.

(viii) All duties and obligations imposed hereby on a Paying Agent or successor Paying Agent shall terminate upon the accomplishment of all duties, obligations and responsibilities imposed by law or required to be performed by this Bond Resolution.

(ix) Any corporation or association into which a Paying Agent may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its assets as a whole or substantially as a whole, or any corporation or association

resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become successor Paying Agent hereunder and vested with all the powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of either the City or the successor Paying Agent, anything herein to the contrary notwithstanding, provided only that such successor Paying Agent shall be satisfactory to the City and eligible under the provisions of Section 7(c)(iv) hereof.

**SECTION 8.** (a) Notwithstanding anything to the contrary in this Bond Resolution, so long as the Series 2019 Bonds are being held under a book-entry system, transfers of beneficial ownership of the Series 2019 Bonds will be affected pursuant to rules and procedures established by the Securities Depository.

(b) As long as a book-entry system is in effect for the Series 2019 Bonds, the Securities Depository Nominee will be recognized as the registered owner of the Series 2019 Bonds for the purposes of (1) paying the principal of or interest on such Series 2019 Bonds, (2) giving any notice permitted or required to be given to registered owners under this Bond Resolution, (3) registering the transfer of such Series 2019 Bonds, and (4) requesting any consent or other action to be taken by the registered owners of such Series 2019 Bonds, and for all other purposes whatsoever, and neither the City nor the Paying and Transfer Agent (as hereinafter defined) shall be affected by any notice to the contrary. For the purposes of this Bond Resolution, "Securities Depository Nominee" shall mean, with respect to the Series 2019 Bonds and as to any Securities Depository, such Securities Depository or the nominee of such Securities Depository in whose name the Series 2019 Bonds shall be registered on the registration books of the City maintained by the Paying and Transfer Agent during the time such Series 2019 Bonds are held under a book-entry system through such Securities Depository.

(c) Neither the City nor the Paying and Transfer Agent shall have any responsibility or obligation to any participant, any beneficial owner or any other person claiming a beneficial ownership in any Series 2019 Bonds which are registered to a Securities Depository Nominee under or through the Securities Depository with respect to any action taken by the Securities Depository as registered owner of such Series 2019 Bonds.

(d) The Paying and Transfer Agent shall pay all principal of and interest on the Series 2019 Bonds issued under a book-entry system, only to the Securities Depository, or the Securities Depository Nominee, as the case may be, for such Series 2019 Bonds, and all such payments shall be valid and effectual to fully satisfy and discharge the obligations with respect to the principal of and interest on such Series 2019 Bonds.

(e) In the event that the City determines that it is in the best interest of the City to discontinue the book-entry system of transfer for the Series 2019 Bonds, or that the interests of the beneficial owners of the Series 2019 Bonds may be adversely affected if the book-entry system is continued, then the City shall notify the Securities Depository and the Paying and Transfer Agent of such determination. In such event, the City shall execute and the Paying and Transfer Agent shall, pursuant to subsequent resolution of the City, authenticate, register and deliver physical certificates for the Series 2019 Bonds in exchange for the Series 2019 Bonds registered in the name of the Securities Depository Nominee. Such certificates shall be in fully

registered form and transferable only upon the registration books of the City maintained by the Paying and Transfer Agent, by the registered owner thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Paying and Transfer Agent, duly executed by the registered owner or his duly authorized attorney in accordance with this Bond Resolution.

(f) In the event that the Securities Depository for the Series 2019 Bonds discontinues providing its services, the City shall either engage the services of another Securities Depository or deliver physical certificates in the manner described in subparagraph (e) above.

(g) In connection with any notice or other communication to be provided to the registered owners of the Series 2019 Bonds by the City or by the Paying and Transfer Agent with respect to any consent or other action to be taken by the registered owners, the City or the Paying and Transfer Agent, as the case may be, shall establish a record date for such consent or other action and give the Securities Depository Nominee notice of such record date not less than fifteen (15) days in advance of such record date to the extent possible.

(h) The Series 2019 Bonds shall be issued initially under the book-entry system maintained by The Depository Trust Company, New York, New York ("DTC"), and shall be registered in the name of Cede & Co., as the initial Securities Depository Nominee for the Series 2019 Bonds. As long as the Series 2019 Bonds are maintained by DTC under its book-entry system, all payments with respect to the principal of and interest on Series 2019 Bonds and notices shall be made and given, respectively, to DTC.

(i) As long as the book-entry-only system is used for the Series 2019 Bonds, any notice of redemption or any other notices required to be given to registered owners will be given only to DTC. Any failure of DTC to advise any DTC Participant, or of any DTC Participant to notify any Indirect Participant, or of any DTC Participant or Indirect Participant to notify any beneficial owner, of any such notice and its content or effect will not affect the validity of the redemption of the Series 2019 Bonds called for redemption or of any other action premised on such notice. Conveyance of notices and other communications by DTC to DTC Participants, by DTC Participants to Indirect Participants and by DTC Participants and Indirect Participants to beneficial owners will be governed by arrangements among them, subject to any statutory and regulatory requirements as may be in effect from time to time. Beneficial owners may desire to make arrangements with a DTC Participant or Indirect Participant so that all notices of redemption or other communications to DTC which affect such beneficial owners will be forwarded in writing by such DTC Participant or Indirect Participant.

**SECTION 9.** The Series 2019 Bonds shall be in substantially the following form, with such appropriate variations, omissions and insertions as are permitted or required by this Bond Resolution:

[SERIES 2019 BOND FORM]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE PAYING AND TRANSFER AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

UNITED STATES OF AMERICA

STATE OF MISSISSIPPI

CITY OF GAUTIER, MISSISSIPPI  
COMBINED UTILITY SYSTEM REVENUE BOND,  
SERIES 2019

No. R-\_\_\_\_\_

\$\_\_\_\_\_

| Interest Rate | Maturity Date      | Date of<br>Original Issue | CUSIP |
|---------------|--------------------|---------------------------|-------|
|               | December 1, 20____ | December ____, 2019       |       |

**Registered Owner:** Cede & Co.

**Principal Amount:**

The City of Gautier, Mississippi (the "City"), a body politic existing under the Constitution and laws of the State of Mississippi, acknowledges itself to owe and for value received, promises to pay in lawful money of the United States of America to the Registered Owner identified above, upon the presentation and surrender of this Bond, at the principal office of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, or its successor, as paying agent (the "Paying Agent") for the Combined Utility System Revenue Bonds, Series 2019, of the City (the "Bonds"), on the maturity date identified above, the principal amount identified above. Payment of the principal amount of this Bond shall be made to the Registered Owner hereof whose name shall appear in

the registration records of the City maintained by the Paying Agent, which shall also serve as registrar and transfer agent, as of the 15<sup>th</sup> day of the calendar month preceding the maturity date hereof.

The City further promises to pay interest (calculated on the basis of a year of 360 days and twelve 30-day months) on such principal amount from the date of this Bond or from the most recent interest payment date to which interest has been paid at the rate of interest per annum set forth above semiannually on June 1 and December 1 of each year (each an "Interest Payment Date"), commencing December 1, 2020, until said principal sum is paid, to the Registered Owner hereof whose name shall appear in the registration records of the City maintained by the Paying Agent as of the 15<sup>th</sup> day of the calendar month preceding the applicable Interest Payment Date (the "Record Date").

Payments of principal of and interest on this Bond shall be made by check or draft mailed on the Interest Payment Date to such Registered Owner at his address as it appears on such registration records. The Registered Owner hereof may change such address by written notice to the Paying Agent by certified mail, return receipt requested, or such other method as may be subsequently prescribed by the Paying Agent, such notice to be received by the Paying Agent not later than the Record Date.

This Bond is one of a series of Bonds of like date of original issue, tenor and effect, except as to denomination, number, rate of interest and date of maturity, issued in the aggregate authorized principal amount of Six Million Dollars (\$6,000,000) to raise money for the purpose of financing (a) the improvement, repair, and extension of the City's combined waterworks, water supply, sewerage, and sewer disposal facilities (the "System"), (b) funding a debt service reserve fund for the Bonds, and (c) paying the costs of issuance of the Bonds.

This Bond is issued under the authority of the Constitution and statutes of the State of Mississippi, including the provisions of Section 21-27-11 *et seq.*, Mississippi Code of 1972, as amended and supplemented from time to time, and by the further authority of proceedings duly had by the Mayor and City Council of the City, including a resolution adopted on December 3, 2019 (the "Bond Resolution"). Terms capitalized herein shall have the same meaning as in the Bond Resolution, unless otherwise expressly provided herein.

The Bonds are secured by a lien on Net Revenues of the System and are payable solely from such Net Revenues and any other security pledged for the Bonds. The Bonds are not general obligations of the City and the taxing power of the City is not being pledged to the payments of the Bonds or interest thereon. The Bonds are being issued on parity with the City's \$3,500,000 Promissory Note (Gautier, Mississippi Combined Utility System Revenue Project), dated August 13, 2013, securing the \$3,500,000 Mississippi Development Bank Special Obligation Bonds, Series 2013 (Gautier, Mississippi Combined Utility System Revenue Project), dated August 13, 2013, and the City's \$4,000,000 Combined Utility System Revenue Bonds, Series 2018, dated June 1, 2018 (collectively, the "Utility Bonds").

**THE BOND RESOLUTION PROVIDES THAT UNDER CERTAIN CIRCUMSTANCES, ADDITIONAL BONDS MAY BE ISSUED BY THE CITY ON PARITY WITH THE BONDS AND THE UTILITY BONDS AND SECURED BY A**



**PARITY LIEN ON NET REVENUES OF THE SYSTEM AND PAYABLE RATABLY FROM SUCH NET REVENUES ALONG WITH THE BONDS AND THE UTILITY BONDS.**

The Bonds are registered as to both principal and interest, and are to be issued or reissued in the denomination of \$5,000 each, or integral multiples thereof up to the amount of a single maturity.

The Bonds maturing December 1, 2030 and thereafter will be subject to redemption prior to their respective maturities, at the option of the City, on and after December 1, 2029, either in whole or in part on any date (as selected by the City among maturities and by lot within each maturity), at the principal amount thereof, together with the interest accrued thereon to the date fixed for redemption and without premium.

At least thirty (30) days before the redemption date of any Bonds, the Clerk shall cause a notice of any such redemption, either in whole or in part, signed by the Clerk, (a) to be filed with the Paying Agent and (b) to be mailed, postage prepaid, to all Registered Owners of the Bonds as of the Record Date (each a "Record Date Registered Owner") at their addresses as they appear on the registration records herein provided for, but failure so to file or mail any such notice shall not affect the validity of the proceedings for such redemption. Each such notice shall set forth the date fixed for redemption, the redemption price, the place or places at which payment shall be made and, if less than all of the Bonds of any one maturity shall be called for redemption and the distinctive numbers and letters, if any, of such Bonds to the redeemed.

On the date so designated for redemption, notice having been given in the manner and under the conditions hereinabove provided, the Bonds so called for redemption shall become due and payable at the price provided for redemption of such Bonds on such date, and, if moneys for payment of such redemption price are held in a separate account by the Paying Agent for the Record Date Registered Owners of the Bonds to be redeemed, as provided in the Bond Resolution, interest on the Bond so called for redemption shall cease to accrue, such Bonds shall cease to be entitled to any benefit or security under the Bond Resolution, and the Record Date Registered Owners of such Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

This Bond may be transferred or exchanged by the Registered Owner hereof in person or by his attorney duly authorized in writing at the principal office of the Paying Agent, but only in the manner, subject to the limitations in the Bond Resolution, and upon surrender and cancellation of this Bond. Upon such transfer or exchange, a new Bond or Bonds of like aggregate principal amount in authorized denominations of the same maturity will be issued.

The City and the Paying Agent may deem and treat the Registered Owner hereof as the absolute owner for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the City nor the Paying Agent shall be affected by any notice to the contrary.

The principal of and interest on this Bond shall be payable solely from the gross Revenues derived from the operation of the System, subject to the prior payment of the

reasonable and necessary expenses of operating and maintaining the System and the payment of loans from State Revolving Funds made prior to the date of issuance of the Bonds ("SRF Loans"). The Bonds are secured by a lien on Net Revenues of the System. This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory restriction, limitation or provision, and the taxing power of the City is not pledged to the payment hereof, either as to principal or interest.

The City covenants and agrees that it will perform all duties required by law and by the Bond Resolution; that it will apply the proceeds of this Bond to the purposes above set forth; that, as long as this Bond is outstanding, it will operate and maintain the System; that it will fix and maintain rates and make and collect charges for the services of the System, without regard to the user thereof, sufficient to provide for the operation and maintenance of the System in good repair and working order, to provide for the payment of the principal of and interest on this Bond as same shall mature and accrue, and to provide for a 2019 Debt Service Reserve Fund, a 2019 Depreciation Fund, and a 2019 Contingent Fund, all as set forth in the Bond Resolution; and that such an amount of the gross Revenues of the System remaining after paying the expenses of operating and maintaining the System and debt service on the SRF Loans as will maintain the payment of the principal and interest on this Bond, as the same shall mature and accrue, is hereby irrevocably pledged to said purpose.

**IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED** that all conditions, acts and things required by law to exist, to have happened and to have been performed precedent to and in the issuance of this Bond, in order to make the same a legal and binding obligation of the City, according to the terms hereof, do exist, have happened and have been performed in regular and due time, form and manner as required by law.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Bond Resolution until the certificate of registration and authentication hereon shall have been signed by the Paying Agent.

**IN WITNESS WHEREOF**, the City has caused this Bond to be executed in its name by the manual or facsimile signature of the Mayor of the City, countersigned by the manual or facsimile signature of the Clerk of the City, under the manual or facsimile seal of the City, which said manual or facsimile signatures and seal said officials adopt as and for their own proper signatures and seal, all as of the \_\_ day of December, 2019.

(SEAL)

**CITY OF GAUTIER, MISSISSIPPI**

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Mayor

**ATTEST:**

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City Clerk

## CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within mentioned Bond Resolution and is one of the Combined Utility System Revenue Bonds, Series 2019 of the City of Gautier, Mississippi.

\_\_\_\_\_, as Paying Agent

By \_\_\_\_\_  
Authorized Officer

Date of Authentication: \_\_\_\_\_

## REGISTRATION AND VALIDATION CERTIFICATE

**STATE OF MISSISSIPPI**

**JACKSON COUNTY**

I, the undersigned Clerk of the City of Gautier, Mississippi, do hereby certify that the within Bond has been duly registered by me as an obligation of said City pursuant to law in a record kept in my office for that purpose, and has been validated and confirmed by Decree of the Chancery Court of Jackson County, Mississippi, rendered on the \_\_ day of December, 2019.

(SEAL)

\_\_\_\_\_  
City Clerk

## ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

\_\_\_\_\_  
(Name and Address of Assignee)

the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ as registrar and transfer agent to transfer the said Bond on the records kept for registration thereof with full power of substitution in the premises.

Signature guaranteed:

\_\_\_\_\_  
(Bank, Trust Company or Paying Agent)

\_\_\_\_\_  
(Authorized Officer)

Date of Assignment: \_\_\_\_\_

Insert Social Security Number or other Tax  
Identification Number of Assignee

\_\_\_\_\_  
NOTICE: The signature to this Assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without any alteration whatever, and must be guaranteed by a commercial bank or trust company or a member of a national securities exchange who is a member of a Medallion Signature Guarantee Program.

**[END OF SERIES 2019 BOND FORM]**

**SECTION 10.** In case any Series 2019 Bond shall become mutilated or be stolen, destroyed or lost, the City shall, if not then prohibited by law, cause to be authenticated and delivered a new Series 2019 Bond of like date, number, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Series 2019 Bond, or in lieu of and in substitution for such Series 2019 Bond stolen, destroyed or lost, upon the Registered Owner's paying the reasonable expenses and charges of the City in connection therewith, and in case of a Series 2019 Bond stolen, destroyed or lost, his filing with the City or Paying Agent evidence satisfactory to them that such Series 2019 Bond was stolen, destroyed or lost, and of his ownership thereof, and furnishing the City or Paying Agent with such security or indemnity as may be required by law or by them to save each of them harmless from all risks, however remote. The provisions of this Section 10 shall not apply if the Book-Entry System is in effect.

**SECTION 11.** Only such of the Series 2019 Bonds as shall have endorsed thereon a certificate of authentication in substantially the form hereinabove set forth in Section 9, duly executed by the Paying Agent, shall be entitled to the rights, benefits and security of this Bond Resolution. No such Series 2019 Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Paying Agent, which executed certificate shall be conclusive evidence of registration, authentication and delivery under this Bond Resolution. The Paying Agent's certificate of authentication on any such Series 2019 Bond shall be deemed to have been duly executed if signed by an authorized officer of the Paying Agent, but it shall not be necessary that the same officer sign said certificate on all of the Series 2019 Bonds that may be issued hereunder at any one time.

**SECTION 12.** (a) In the event the Purchaser shall fail to designate the names, addresses and social security or tax identification numbers of the Registered Owners of the Series 2019 Bonds within thirty (30) days of the date of sale, or at such other earlier date as may be designated by the City, one Series 2019 Bond registered in the name of the Purchaser may be issued in the full amount for each maturity. Ownership of the Series 2019 Bonds shall be in the Purchaser until the initial Registered Owner has made timely payment and, upon request of the

Purchaser within a reasonable time of the initial delivery of the Series 2019 Bonds, the Paying Agent shall re-register any such Series 2019 Bond upon its records in the name of the Registered Owner to be designated by the Purchaser in the event timely payment has not been made by the initial Registered Owner.

(b) Except as hereinabove provided, the Person in whose name any of the Series 2019 Bonds shall be registered in the records of the City maintained by the Paying Agent may be deemed the absolute owner thereof for all purposes, and payment of or on account of the principal of or interest on any of the Series 2019 Bonds shall be made only to or upon the order of the Registered Owner thereof, or his legal representative, but such registration may be changed as hereinafter provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon any of the Series 2019 Bonds to the extent of the sum or sums so paid.

**SECTION 13.** (a) The Series 2019 Bonds shall be transferable only in the records of the City as maintained by the Paying Agent, upon surrender thereof at the office of the Paying Agent, together with a written instrument of transfer satisfactory to the Paying Agent duly executed by the Registered Owner or his or its attorney duly authorized in writing. Upon the transfer of any of the Series 2019 Bonds, the City, acting through the Paying Agent, shall issue in the name of the transferee a new Series 2019 Bond or Series 2019 Bonds of the same aggregate principal amount and maturity and rate of interest as the surrendered Series 2019 Bond or Series 2019 Bonds.

(b) In all cases in which the privilege of transferring any of the Series 2019 Bonds is exercised, the Paying Agent shall authenticate and deliver said Series 2019 Bonds in accordance with the provisions of this Bond Resolution.

**SECTION 14.** (a) Payment of principal on the Series 2019 Bonds shall be made, upon presentation and surrender thereof at the principal office of the Paying Agent, to the Record Date Registered Owner thereof whose name shall appear in the registration records of the City maintained by the Paying Agent as of the Record Date.

(b) Payment of each installment of interest on the Series 2019 Bonds shall be made to the Record Date Registered Owner thereof. Interest shall be payable in the aforesaid manner irrespective of any transfer or exchange of such Series 2019 Bond subsequent to the Record Date and prior to the due date of the interest.

(c) Principal of and interest on the Series 2019 Bonds shall be paid by check or draft mailed on the Interest Payment Date to Registered Owners at the addresses appearing in the registration records of the Paying Agent. Any such address may be changed by written notice from the Registered Owner to the Paying Agent by certified mail, return receipt requested, or such other method as may be subsequently prescribed by the Paying Agent, such notice to be received by the applicable principal or Interest Payment Date to be effective as of such date.

**SECTION 15.** The Series 2019 Bonds are secured by a lien on Net Revenues of the System and the principal of and interest on the Series 2019 Bonds shall be payable solely from Net Revenues. The Series 2019 Bonds shall not constitute an indebtedness of the City within the

meaning of any constitutional or statutory restriction, limitation or provision, and the taxing power of the City is not pledged to the payment of the Series 2019 Bonds, either as to principal or interest. The Series 2019 Bonds are issued on parity with the Utility Bonds and any Additional Bonds and satisfy the requirements for the issuance of Additional Bonds under the Prior Resolutions.

**SECTION 16.** From and after the issuance and delivery of the Series 2019 Bonds, the System shall be operated on a Fiscal Year basis, commencing on the first day of October, and ending on the last day of September in the following year; provided, however, that the Fiscal Year may be changed upon written notice to the Registered Owners.

**SECTION 17.** All Revenues shall be set aside as collected and shall be deposited into the Revenue Fund. Moneys in said fund shall not be subject to lien or attachment by any creditor of the City and shall be set aside for, allocated to, and deposited by the Clerk to the extent available in the following order of preference in the following separate and special funds, as created in a prior resolution or resolutions of the Governing Body and provided for in this Bond Resolution, without further direction of or action by the Governing Body or other authority of the City:

(a) On the first Business Day of each month, commencing in the first month after delivery of the Series 2019 Bonds, there shall be deposited into the Operation and Maintenance Fund an amount which will provide for the payment of the Current Expenses to be paid during such calendar month, and, in the event that the aggregate amounts deposited into such fund pursuant to the Resolution during the preceding months shall have been insufficient to pay all such expenses, an amount sufficient to repay such deficiencies.

(b) To the City such amount necessary to reimburse the general fund of the City for debt service due on the SRF Loans deducted by the Mississippi Department of Revenue from the sales tax rebate to the City.

(c) On the first Business Day of each month, commencing in the first month after the delivery of the Series 2019 Bonds, in addition to amounts being transferred to the 2013 Debt Service Fund and the 2018 Debt Service Fund, there shall be transferred to the 2019 Debt Service Fund, which is hereby established as a fund separate and apart from other funds of the City, an amount which, together with equal subsequent monthly transfers on the first Business Day of each successive month, will provide a sum equal to the amount necessary to pay interest and principal due and payable through the date on which the next installment of principal on the Series 2019 Bonds is due. Such transfers are on parity with the amounts to be transferred to the 2013 Debt Service Fund pursuant to the 2013 Loan Agreement and to the 2018 Debt Service Fund pursuant to the 2018 Bond Resolution for the purpose of paying debt service on the 2013 Note and the Series 2018 Bonds, respectively. If in any month, the Net Revenues are insufficient to provide for the total amount of principal and interest to be set aside as required by the Bond Resolution and the Prior Bond Resolutions, such Net Revenues shall be divided on a pro rata basis among each outstanding series of Bonds. Any deficiency in the debt service funds for the Bonds shall be funded in subsequent months.

(d) Provided, that in addition to the moneys required to be transferred to the 2019 Debt Service Fund, the 2019 Debt Service Reserve Fund, which is hereby established as a fund separate and apart from other funds of the City, shall be maintained in order to meet any deficiency therein in future years. In order to fully fund the 2019 Debt Service Reserve Fund, the Clerk shall immediately upon delivery of the Series 2019 Bonds deposit an amount which will be equal to the Debt Service Reserve Fund Requirement, at which amount the 2019 Debt Service Reserve Fund shall thereafter be maintained by such future payments as may be necessary for that purpose. Notwithstanding any other provision contained herein, upon the determination of any deficiency in the total amount in the 2019 Debt Service Reserve Fund, the full amount of such deficiency shall be fully funded within one (1) year of such determination. The 2019 Debt Service Reserve Fund shall be used only to pay maturing principal and accruing interest, or both, on the Series 2019 Bonds and only whenever and to the extent that funds otherwise available in the 2019 Debt Service Fund are insufficient for that purpose. No funds paid into the 2019 Debt Service Reserve Fund shall be used to prepay the principal unless such prepayment is for the entire balance of the principal amount of the Series 2019 Bonds or the amount remaining in the 2019 Debt Service Reserve Fund is equal to the Debt Service Reserve Requirement for the Series 2019 Bonds which remain outstanding. If the amount on deposit in the 2019 Debt Service Reserve Fund as valued on the last day of any Bond Year is more than the Debt Service Reserve Fund Requirement, the amount of such excess shall be transferred to the 2019 Debt Service Reserve Fund.

(e) There is hereby established the 2019 Depreciation Fund, which fund is supplemental to the depreciation funds for the 2013 Note and the Series 2018 Bonds. Moneys deposited to the 2019 Depreciation Fund shall be held within the 2018 Depreciation Account. In order to fully fund the 2019 Depreciation Fund, the Clerk shall immediately upon delivery of the Series 2019 Bonds transfer the sum of Five Thousand Dollars (\$5,000) from the proceeds of the Series 2019 Bonds, which sum shall thereafter be maintained in such fund by such future payments as may be necessary for that purpose. Notwithstanding any other provision contained herein, upon the determination of any deficiency in the total amount on deposit in the 2019 Depreciation Fund, the full amount of such deficiency shall be fully funded within one (1) year of such determination. The 2019 Depreciation Fund shall be used for the purpose of paying the cost of replacing such parts of the System as may need replacement in order to keep the System operating in an economical and efficient manner upon written certification by the Consulting Engineers to the Governing Body certifying the necessity for such expenditure and concurring in the necessity for such expenditure from the 2019 Depreciation Fund; provided, however, that in the event the funds otherwise provided for the payment of the principal of and interest on the Series 2019 Bonds should be insufficient for said purpose, then and in that event, to the extent of any such insufficiency, the amount necessary to pay accruing interest and to provide for the payment of the principal as set forth in subparagraph (c) of this section shall be drawn from the 2019 Depreciation Fund and shall be used, together with funds otherwise available, to pay such accruing interest and to provide for the payment of principal as set forth in subparagraph (c) of this section.

(f) There is hereby established the 2019 Contingent Fund, which fund is supplemental to the contingency funds for the 2013 Note and the Series 2018 Bonds. Moneys deposited to the 2019 Contingent Fund shall be held within the 2018 Contingent Account. In

order to fully fund the 2019 Contingent Fund, the Clerk shall immediately upon delivery of the Series 2019 Bonds deposit the sum of Five Thousand Dollars (\$5,000) from the proceeds of the Series 2019 Bonds, which sum shall thereafter be maintained in such fund by such future payments as may be necessary for that purpose. Notwithstanding any other provision contained herein, upon the determination of any deficiency in the total amount on deposit in the 2019 Contingent Fund the full amount of such deficiency shall be fully funded within one (1) year of such determination. The 2019 Contingent Fund shall be used for the purpose of paying the cost of unforeseen contingencies arising in the operation and maintenance of the System, including the construction of reasonable and proper improvements, betterments, and extensions thereto upon written certification by the Consulting Engineers to the Governing Body certifying the necessity for such expenditure and concurring in the necessity for such expenditure from the 2019 Contingent Fund; provided, however, that in the event the funds otherwise provided for the payment of the principal of and interest on the Series 2019 Bonds should be insufficient for said purpose, then and in that event, to the extent of any such insufficiency, the amount necessary to pay accruing interest and to provide for the payment of the principal as set forth in subparagraph (c) of this section shall be drawn from the 2019 Contingent Fund and shall be used, together with funds otherwise available, to pay such accruing interest and to provide for the payment of principal as set forth in subparagraph (c) of this section.

The moneys in the foregoing funds shall be held separate and apart from all other funds of the City and shall be applied in the manner provided, and, except for moneys in the Operation and Maintenance Fund, pending such application, shall be subject to a lien and charge in favor and for the security of Registered Owners of the Series 2019 Bonds until paid out or transferred as herein provided. Any surplus Revenues remaining after all deposits and transfers required or allowed by the Resolution shall be used solely for purposes pertaining to the System or as otherwise allowed by the Act.

Any Revenues of the System collected prior to the Closing by the City may be used by the City to fund all or a portion of the foregoing funds and accounts.

**SECTION 18.** If Revenues shall be insufficient at any time to make the payments or deposits required by Section 17 hereof, the deficiency shall be made good by additional payments to be made out of the first available Revenues received during any succeeding month or months. Whenever and as long as sums actually in the 2019 Debt Service Fund and the 2019 Debt Service Reserve Fund shall equal the outstanding principal amount of the Series 2019 Bonds, plus the amount of all interest due thereon until the respective maturity dates of the Series 2019 Bonds, no further deposits need be made into said funds.

**SECTION 19.** All sums in the funds referred to in Section 17 hereof shall be kept in a bank or banks having Federal Deposit Insurance Corporation insurance of its accounts and at all times shall be continuously secured as provided by the laws of the State for other funds of the City, or, in the discretion of the Governing Body, may be invested as directed in this Bond Resolution in investments authorized under the laws of the State as may now be or hereafter become applicable. Such investments shall mature or be redeemable prior to the time the funds so invested will be needed for expenditure. Any interest or other income received from investments shall accrue to and be accredited to the fund which generated such income or to which such income is attributable. Provided, however, that the Governing Body shall transfer to



the 2019 Debt Service Fund any such income in excess of the aggregate amount required by this Bond Resolution to be maintained in any other fund or account.

**SECTION 20.** The City covenants and agrees with the Registered Owners that it will perform, or cause to be performed, all duties with respect to the operation and maintenance of the System and with respect to the fixing, maintaining and collecting of the rates, fees and charges for the services thereof, the establishing of the funds herein referred to, and all other matters and things required by law and by this Bond Resolution, and that it will do or cause to be done, in apt time and season, each and every official act necessary for the payment of the principal of and the interest on the Series 2019 Bonds as the same shall mature and accrue.

**SECTION 21.** The City further covenants with the Registered Owners as follows:

(a) As long as any of the Series 2019 Bonds are outstanding and unpaid, it will operate and maintain the System, or cause the System to be operated and maintained.

(b) As long as any of the Series 2019 Bonds are outstanding and unpaid, it will fix and maintain rates and make and collect charges for the use and service of the System which will at all times be sufficient: (i) to pay the Current Expenses of the System, and (ii) to provide 120% of the amount of the maximum Principal and Interest Requirements and the payments required to be made to the credit of the 2019 Debt Service Reserve Fund for the current Bond Year on account of the Series 2019 Bonds then outstanding.

(c) The rates, fees and charges for the use and service of the System at the Closing will be sufficient to satisfy the requirements of the preceding paragraph.

(d) If the Revenues in any Fiscal Year as shown by the City's audit are less than the total amount set forth in subsection (b) of this section, then it shall, as promptly as possible, request the Consulting Engineers to make recommendations as to a revision of such rates, fees and charges or methods of operating the System which will result in producing the required amount in the following Fiscal Year. Upon receipt of such recommendations the City shall, subject to applicable requirements imposed by law, immediately revise such rates, fees and charges and take such other actions respecting the methods of operation of the System as shall in its discretion be deemed necessary. Failure to implement the recommendation of the Consulting Engineer or if coverage is less than 120% of the maximum Principal and Interest Requirements and the payment required to be made to the credit of the 2019 Debt Service Reserve Fund shall be a breach of the City's covenants under this Bond Resolution.

(e) As long as any of the Series 2019 Bonds shall remain outstanding and unpaid, the City shall carry and maintain insurance upon such properties forming a part of the System which may be of an insurable nature, such insurance to be of the type and kind and for such amount or amounts as carried and maintained by other municipalities rendering services of a similar character in similar communities. The proceeds of such insurance shall be used only for the maintenance and restoration of the System, or for the payment of the principal of and the interest on the Series 2019 Bonds.

(f) The City shall set up and maintain a proper system of accounts showing the amount of Revenues received from the System and the application thereof. Such accounts shall be separate and distinct from the other accounts of the City, and at least once a year shall be properly audited by independent auditors who shall be certified public accountants. The report of such audit shall be open to the public and to all Registered Owners upon reasonable request.

(g) The Registered Owner of any of the Series 2019 Bonds shall be permitted, at all reasonable times, to inspect the System and all records, accounts and data relating thereto, and shall be furnished all data and information relating to the System which may be reasonably requested.

(h) Except as provided for in Section 23(b) of this Bond Resolution, the City will not create or permit to be created any charge or lien on Revenues ranking equal or prior to the charge or lien of the Series 2019 Bonds.

**SECTION 22.** Prior to the commencement of each Fiscal Year, the Governing Body shall cause to be prepared a budget setting out the estimated receipts and expenditures of the System for the then ensuing Fiscal Year. This budget shall contain:

(a) An estimate of the receipts expected to be derived from the operation of the System;

(b) A statement of the estimated cost of operating the System during the next ensuing Fiscal Year;

(c) A statement of the amount of principal and interest due during the ensuing Bond Year;

(d) A statement of what replacements to the System may be anticipated and the estimated cost thereof;

(e) A statement of the total amount anticipated to be payable from Revenues during the next ensuing Fiscal Year; and

(f) A statement of the amount on deposit in each of the funds referred to in Section 17 of this Bond Resolution.

**SECTION 23.** (a) (i) Except as hereafter set forth in subparagraph (b) below, from and after the issuance of the Series 2019 Bonds, no Additional Bonds shall be issued or obligations incurred by the City which are payable in whole or in part from or chargeable to Revenues (except obligations incurred in the operation and maintenance of the System), unless such Additional Bonds or obligations are in all respects junior and subordinate to the Bonds.

(b) The City shall have the right to issue one or more series of Additional Bonds to be secured by a parity lien on and ratably payable from Net Revenues and any other security pledged to the Bonds, provided in each instance that:

(i) the Net Revenues available for payments of principal and interest on the Bonds for a period of 12 consecutive months during the 18 months preceding the month in which such Additional Bonds are issued must be certified by an accountant to have been at least equal to 120% of the highest annual debt service payments in any succeeding Bond Year with respect to the Bonds and the Additional Bonds proposed to be issued; or in lieu of the foregoing formula, if a new schedule of rates, fees and charges for the services, facilities and commodities of the System shall have been adopted, then the Revenues available for debt service payments (taking into account such new rates) must be certified by an accountant to have been at least equal to 120% of the highest annual debt service payments in any succeeding Bond Year with respect to the Bonds and the Additional Bonds proposed to be issued during the period set forth above;

(ii) the pledge of and lien on the Net Revenues and amounts on deposit from time to time in the 2019 Debt Service Fund shall be extended for the benefit of the registered owners of the Additional Bonds; and

(iii) the resolution under which the proposed bonds are being issued shall provide for the funding of an additional debt service reserve fund for such Additional Bonds resulting from the issuance of such Additional Bonds from the proceeds of such Additional Bonds.

(c) The City hereby covenants and agrees that in the event Additional Bonds in one or more series are issued on parity with the Bonds, it shall:

(i) Adjust the deposits into the 2019 Debt Service Fund in the following manner: On the first Business Day of each month, commencing in the first month after the delivery of the Additional Bonds, there shall be deposited into the 2019 Debt Service Fund and an additional debt service fund for such Additional Bonds to an amount which, after taking into account any amounts already on deposit and equal subsequent monthly deposits on the first Business Day of each successive month, will provide a sum equal to the amount necessary to pay interest and principal due and payable through the date on which the next installment of principal on the Bonds and the Additional Bonds is due.

(ii) Adjust the amount on deposit in the 2019 Debt Service Reserve Fund and an additional debt service reserve fund for such Additional Bonds to a sum equal to the Debt Service Reserve Fund Requirement as calculated for the Bonds and such Additional Bonds. The additional funds required in the immediately preceding sentence shall be funded from the proceeds of the Additional Bonds.

(iii) Adjust the maximum amounts to be deposited annually into the 2019 Depreciation Fund and the 2019 Contingent Fund, taking into account the future replacement cost of the facilities and equipment to be constructed or acquired with the proceeds of such Additional Bonds, by depositing into said funds or such corresponding funds as may be established for such Additional Bonds, on the first Business Day of each month, commencing in the first month after the delivery of such Additional Bonds, such amount, if any, of the balance remaining after making the deposits under clauses (i) and

(ii) above (or the entire balance if less than the required amount) as is required by the resolution under which such Additional Bonds are issued.

(d) The City shall have the right to call, subject to the call provisions of the respective Bond series, any or all outstanding Bonds which may be called at par prior to calling any Bonds that are callable at a premium. If it is provided in any subsequently issued series of Additional Bonds secured by a parity lien on Net Revenues that excess moneys in the 2019 Debt Service Fund shall be used to redeem bonds in advance of scheduled maturity or if the City, at its option, undertakes to redeem outstanding Bonds in advance of scheduled maturity, it is agreed and understood that:

(i) calls of or prepayment on Bonds will apply to each series of Bonds on an equal pro rata basis (reflecting the proportion of the original amount of each series of Bonds outstanding at the time of such call); and

(ii) calls of Bonds for each Bond series will be in accordance with the call provisions of the respective Bond series.

(e) The City may issue bonds junior and subordinate to the Bonds and any Additional Bonds at any time, provided that the issuance of such bonds does not violate any covenant of the City concerning any of its then outstanding Bonds.

**SECTION 24.** (a) The provisions of this Bond Resolution shall constitute a contract between the City and the Registered Owners from time to time of the Series 2019 Bonds, and after the issuance of the Series 2019 Bonds no changes, additions or alterations of any kind shall be made hereto in any manner except upon consent of the Registered Owners of at least sixty-five percent (65%) in principal amount of the Series 2019 Bonds then outstanding, such consent to be evidenced by an instrument or instruments signed by such Registered Owners and duly acknowledged in the manner of a deed for the conveyance of real estate in the State. Such instruments shall contain or be accompanied by proofs of ownership of specified numbers and principal amounts of the Series 2019 Bonds, shall be filed in the office of the Clerk and shall be a public record.

(b) Any and all modification or alterations made in the manner hereinabove provided shall not become effective until the required consents shall have been filed with the Clerk.

(c) No modifications or alterations to this Bond Resolution shall extend the maturity of or reduce the interest rate on or otherwise alter or impair the obligation to pay the principal of or the interest on any of the Series 2019 Bonds at the time and place and at the rate and in the currency as provided herein, without the express consent of the Registered Owner of any of such Series 2019 Bonds, nor reduce the percentage of the Series 2019 Bonds required for the affirmative vote or written consent to a modification or alteration, nor alter or impair the covenants set forth in Sections 20 and 21 hereof.

**SECTION 25.** The Series 2019 Bonds shall be payable equally and ratably, without regard to the date when the Series 2019 Bonds actually shall be delivered and shall enjoy parity of lien, one with the other, upon Net Revenues and with the Utility Bonds.

**SECTION 26.** (a) Principal proceeds in the amount of Six Million Dollars (\$6,000,000) derived from the sale of the Series 2019 Bonds, less amounts deposited to the 2019 Contingent Fund, the 2019 Depreciation Fund, the 2019 Debt Service Reserve Fund, if applicable, shall be deposited in the 2019 Construction Fund hereby created by this Bond Resolution. Moneys deposited in the 2019 Construction Fund shall be held within the 2018 Construction Account and shall be applied solely and only for the purpose for which the Series 2019 Bonds are herein directed to be issued for the Project.

(b) Said proceeds deposited into the 2019 Construction Fund shall be disbursed only upon proper warrant issued pursuant to certification by the Consulting Engineers stating that:

(i) the purpose for which the payment is to be made is a Cost of the Project within the scope of the work contemplated by this Bond Resolution;

(ii) the work done is, or the materials furnished are, in accordance with the contract therefor (if such work is done or such materials are furnished under a contract), or such work is or that such materials are suitable for the intended purpose (if such payments are not covered by an express contract); and

(iii) the amount of such payment is in accordance with the contract or is reasonable.

Nothing herein shall be construed to prohibit the payment from the 2019 Construction Fund without such a certificate of a portion or all of the expenses necessarily incident to the costs of issuance and sale of the Series 2019 Bonds. Said costs of issuance expenses are hereby authorized to be paid after the Closing with the approval of the Governing Body.

(c) Any balance remaining in the 2019 Construction Fund after the Project has been completed, and all related costs and expenses paid, shall be deposited into the 2019 Debt Service Fund and expended in accordance with State and federal law and this Bond Resolution.

**SECTION 27.** (a) The Registered Owner of any of the Series 2019 Bonds may, by suit, action, mandamus or other proceedings at law or in equity, enforce and compel performance by the appropriate official or officials of the City of any or all acts and duties to be performed by the City under the provisions of the Act and of this Bond Resolution.

(b) Each of the following constitutes an event of default under this Bond Resolution:

(i) failure by the City to pay any installment of principal of any Bond at the time required;

(ii) failure by the City to pay any installment of interest on any Bond at the time required;

(iii) failure by the City to perform or observe any other covenant, agreement or condition on its part contained in this Bond Resolution or in the Series 2019 Bonds, and the continuance thereof for a period of sixty (60) days after written notice thereof to the

City by the Registered Owners of not less than ten percent (10%) in principal amount of the then outstanding Bonds; or

(iv) filing by the City of a petition seeking a composition of indebtedness under the federal bankruptcy laws, or under any other applicable federal or state law.

(c) If there be any default in the payment of the principal of and interest on the Series 2019 Bonds, any court having jurisdiction in the proper action may, upon petition of the Registered Owners of a majority in principal amount of the Series 2019 Bonds then outstanding, appoint a receiver to administer and operate the System with power to fix rates and collect charges sufficient to provide for the payment of the Series 2019 Bonds and to pay the expense of operating and maintaining the System in conformity with the provisions of the Act and of this Bond Resolution.

**SECTION 28.** At least five (5) days prior to the due date thereof, the Clerk of the City shall remit to the Paying Agent the sum or sums then becoming due as interest, or principal and interest, on the Series 2019 Bonds, plus the sum then due as the charges of the Paying Agent for its services and responsibilities under the terms of this Bond Resolution, which charges shall be expenses of operation and shall be charged to and payable from the Operation and Maintenance Fund referred to in Section 17 of this Bond Resolution.

**SECTION 29.** The Series 2019 Bonds have been submitted to validation before the Chancery Court of Jackson County, Mississippi as provided by Sections 31-13-1 to 31-13-11, Mississippi Code of 1972, as amended, and for that purpose the Clerk is hereby authorized and directed to transmit to the State's Bond Attorney a certified copy of all of the legal papers pertaining to the issuance of the Series 2019 Bonds, including transcripts of records, resolutions, proofs of publication, tabulation or votes, if applicable, and all facts pertaining to the issuance of the Series 2019 Bonds.

**SECTION 30.** If the City shall pay or cause to be paid to the Registered Owners of the Series 2019 Bonds the principal of, premium, if any, and interest to become due with respect thereto at the times and in the manner stipulated therein and herein, and if the City shall keep, perform and observe all and singular the covenants and promises in the Series 2019 Bonds and in this Bond Resolution expressed as to be kept, performed and observed by it or on its part and shall pay or cause to be paid to the Paying Agent all sums of money due or to become due according to the provisions hereof, then the rights of the Registered Owners under the Resolution shall cease, determine and be void, and thereupon the lien of this Bond Resolution on Net Revenues shall be defeased, cancelled, and discharged.

**SECTION 31.** The City covenants to comply with each requirement of the Code, necessary to maintain the exclusion of interest on the Series 2019 Bonds from gross income for federal income tax purposes, and in furtherance thereof, to comply with a certificate to be executed and delivered concurrently with the issuance of the Series 2019 Bonds, or such other covenants as may, from time to time, be required to be complied with in order to maintain the exclusion of interest on the Series 2019 Bonds from gross income for federal income tax purposes. The City shall not use or permit the use of any of the proceeds of the Series 2019 Bonds, or any other funds of the City, directly or indirectly, to acquire any securities, bonds or

other investment property, and shall not take or permit to be taken any other action or actions, which would cause any Series 2019 Bond to be an "arbitrage bond" as defined in Section 148 of the Code. Notwithstanding any other provisions to the contrary, so long as necessary in order to maintain the exclusion of interest on the Series 2019 Bonds from gross income for federal income tax purposes under the Code, the covenants contained in this section shall survive the payment of the Series 2019 Bonds and the interest thereon, including any payment or defeasance thereof.

**SECTION 32.** The City shall not hereafter construct, acquire or operate, or permit, or, to the extent permitted by law, consent to the construction, acquisition or operation of, any plants, structures, facilities or properties which may compete or tend to compete with the System; except that nothing in this Bond Resolution contained shall prevent the City from giving its permission or consent to the construction, acquisition or preparation in the area serviced by the System by a Person or facilities for the provision of utility services which the City shall determine are not economically feasible for it to construct or acquire at such time, but which, if constructed or acquired by the City, would carry out the purposes of the City and its System under the Act and such facilities pursuant to the terms of such permission or consent will become a part of the System upon notice to such person by the City, either (a) without any cost to or payment by the City, or (b) upon payment of such amount or cost as the City shall determine to be proper in the circumstances.

**SECTION 33.** The City covenants that it will (a) diligently enforce and collect all fees, rental or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the laws of the State, and (b) to the full extent permitted by law, under reasonable rules and regulations, shut off and discontinue the supplying of the services and facilities of the System for the non-payment of fees, rentals or other charges for said water services, and will not restore said water services until all delinquent charges, together with interest and reasonable penalties, have been paid in full.

**SECTION 34.** Pursuant to SEC Rule 15c2-12(b)(5), the City covenants and agrees to provide to the Purchaser a continuing disclosure certificate, dated the date of issuance and delivery of the Series 2019 Bonds, setting forth the City's agreement with regard to continuing disclosure (the "Continuing Disclosure Certificate"), and to comply with the covenants set forth therein and carry out all of the provisions of the Continuing Disclosure Certificate. In the event the City fails to comply with the provisions of the Continuing Disclosure Certificate, any Registered Owner may take such actions as may be necessary and appropriate, including mandamus or specific performance by court order, to cause the City to comply with its obligations set forth in the Continuing Disclosure Certificate and this Section 34.

**SECTION 35.** The City covenants that it will not provide free service to any user of the System unless permitted by State statute.

**SECTION 36.** The Mayor, the Clerk, and the proper officers and members of the Governing Body are hereby authorized, empowered, and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of this Bond Resolution and are further authorized to take any and all further actions

and execute and deliver any and all other documents and certificates as may be necessary or desirable in connection with the issuance of the Series 2019 Bonds, the Preliminary Official Statement, a final Official Statement, in substantially the form of the Preliminary Official Statement, or other documents necessary to conclude the sale and issuance of the Series 2019 Bonds, from time to time, and to document the City's compliance with the Act and the Code.

**SECTION 37.** All acts and doings of the officers and members of the Governing Body which are in conformity with the purposes and intents of this Bond Resolution and in furtherance of the sale and issuance of the Series 2019 Bonds, from time to time, and the execution, delivery, and performance of the Preliminary Official Statement and the Official Statement, shall be, and the same hereby are, in all respects approved and confirmed.

**SECTION 38.** In the event that any scrivener's errors shall be discovered in this Bond Resolution after the adoption hereof, but prior to the issuance of the Series 2019 Bonds, the Governing Body hereby authorizes and directs that each such scrivener's error shall be corrected in all multiple counterparts of this resolution prior to the issuance of the Series 2019 Bonds.

**SECTION 39.** If any one or more of the provisions of this Bond Resolution shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any of the other provisions of this Bond Resolution, but this Bond Resolution shall be construed and enforced as if such illegal or invalid provision or provisions had not been contained herein.

**SECTION 40.** All resolutions or parts thereof in conflict with this Bond Resolution, to the extent of such conflict only, are hereby repealed.

**SECTION 41.** The preparation of the Series 2019 Bonds for sale and delivery being now immediately necessary, this Bond Resolution shall become effective immediately upon the adoption hereof.

Council Member \_\_\_\_\_ seconded the motion to adopt the foregoing resolution, and the question being put to a roll call vote, the result was as follows:

|                                     |        |
|-------------------------------------|--------|
| Mayor Phil Torjusen                 | Voted: |
| Councilwoman Mary Martin            | Voted: |
| Councilman Cameron B. George        | Voted: |
| Councilman Richard "DJ" Jackson     | Voted: |
| Councilman Casey Vaughan            | Voted: |
| Councilman Charles "Rusty" Anderson | Voted: |
| Councilman Adam Colledge            | Voted: |



The motion having received the affirmative vote of a majority of the members of the Governing Body present, being a quorum of said Governing Body, the Mayor declared the motion carried and the resolution adopted this 3<sup>rd</sup> day of December, 2019.

(SEAL)

**CITY OF GAUTIER MISSISSIPPI**

By \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

50245802.v1

**EXHIBIT A**

**PROOF OF PUBLICATION OF NOTICE OF SALE**

**EXHIBIT B**

**PRELIMINARY OFFICIAL STATEMENT AND BID FORM**

**EXHIBIT C**

**BIDS**

**CITY OF GAUTIER**  
**Business Agenda Item #6**  
**Fact Sheet**

**Council Meeting:** December 3, 2019  
**Title:** Authorization for the Emergency Repair of the Beasley Well

**Introduced by:**  
**Contact Person/Telephone** City Manager, Paula Yancey 497-8000 ext. 306

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**Summary Explanation: Authorization for the Emergency Repair of the Beasley Well**

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input type="checkbox"/>            |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract</b>                | <input type="checkbox"/>            |
| <b>Minutes</b>                 | <input type="checkbox"/>            |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input checked="" type="checkbox"/> |
| <b>Other</b>                   | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**

**Approval**

**Motion Made by:**

|          |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
|----------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|
| Torjusen | <input type="checkbox"/> | Martin | <input type="checkbox"/> | George | <input type="checkbox"/> | Jackson | <input type="checkbox"/> | Vaughan | <input type="checkbox"/> | Anderson | <input type="checkbox"/> | Colledge | <input type="checkbox"/> |
|----------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|

**Second Made by:**

|          |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
|----------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|
| Torjusen | <input type="checkbox"/> | Martin | <input type="checkbox"/> | George | <input type="checkbox"/> | Jackson | <input type="checkbox"/> | Vaughan | <input type="checkbox"/> | Anderson | <input type="checkbox"/> | Colledge | <input type="checkbox"/> |
|----------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|

| <b>Voted as follows:</b> |                 | <b>Ayes</b>              | <b>Nays</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | <b>Torjusen</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | <b>Martin</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | <b>George</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | <b>Jackson</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | <b>Vaughan</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | <b>Anderson</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | <b>Colledge</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 000-2019**

**WHEREAS**, the City of Gautier has discovered that the Beasley water well has developed a hole in the well wall at a depth of approximately 282 feet; and

**WHEREAS**, the hole has resulted in infiltration of sand into the well, and has caused irreparable failure of the water pump; and

**WHEREAS**, damage to the Beasley well is critically affecting the City's water capacity, and as such must be repaired immediately; and

**WHEREAS**, City Council hereby finds that an emergency exists as described above, and that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the City; and

**WHEREAS**, Staff has obtained the attached quote from Lyman Well Company to perform an emergency well restoration and pump replacement, for a cost of \$66,700.00; and

**WHEREAS**, the Mayor and Members of Council hereby find it is in the best interest of the City of Gautier to approve this emergency repair work; and

**WHEREAS**, the Mayor and Council Members find, consistent with fact, that this quote is commercially reasonable, is not made to circumvent the public purchasing statutes, and that the cost is reasonable;

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the Beasley well emergency repair, as quoted by Lyman Well Company in the amount of \$66,700.00, is hereby approved.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary for this purpose.

Motion was made by **BLANK** seconded by **BLANK** and the following vote was recorded:

**AYES:**

**NAYS:**

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**MAYOR**

**ATTEST:**

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**CITY CLERK**

**BLANK** by Mayor and Members of the Council of the City of Gautier, Mississippi,  
at the meeting of December 3, 2019.

**CITY OF GAUTIER  
MEMORANDUM**

**To:** City Council  
**From:** Paula Yancey, City Manager  
**Date:** November 26, 2019  
**Subject:** Authorization to approve the emergency repair for the Beasley well

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**REQUEST:**

The City Manager is requesting the approval of emergency repair for the Beasley well, which is required to properly and adequately provide water to the citizens of the City.

**BACKGROUND:**

The Beasley well has developed a hole in the well wall at a depth of approximately 282 feet. This must be fixed immediately in order to prevent critically affecting the City's capacity. Giving opportunity for competitive bidding would be detrimental to the interests of the City and its water capacity.

**DISCUSSION:**

Lyman Well Company has provided a quote to perform a well restoration and pump replacement for a cost of \$66,700.00. Once approved for emergency repair, Lyman Well Company can begin to fix the well.

**RECOMMENDATION:**

The City Manager recommends the City Council approve the emergency repair for the Beasley

**ATTACHMENT(S):**

1. Lyman Well Company Attachment



LYMAN WELL COMPANY

15456 SUB LADNER RD  
GULFPORT, MS 39503  
228-832-3193 office  
228-832-3313 fax

November 20<sup>th</sup> 2019

City of Gautier  
Paula Yancey  
3330 HWY 90  
Gautier MS 39553

Ms. Paula Yancey:

RE: Beasley Well repair

Dear Ms. Yancey,

As you know from our video the Beasley water well has a hole in the casing at a depth of 282 feet. Below is an itemized quote to repair the well and place it back into service.

1. Weld and Install with a crane 430' of 10" liner with 10"x12" K packers. (rubber seals )- \$31,200.00
2. Pump liquid acid descaler threw a tremmie pipe inside of the screens and agitate to remove the scale and mineral build up. \$2,500.00
3. Install a new pump with new 6" column assembly since the old will not fit and it is ruined from pumping sand. \$33,000.00  
700 gpm @290' of TDH  
Total - \$66,700.00

This work will give you new casing from ground level to the top of your lap pipe. It will also give new pumping equipment from below the well head all the way to your pump.

Thank you,

Josh Ladner

License # UNR 0-640

Josh Ladner

General Manager

**CITY OF GAUTIER  
Business Agenda Item #7  
Fact Sheet**

**Council Meeting:**  
**Title:**

**December 3, 2019  
Approval of Docket of Claims**

**Introduced by:**  
**Contact Person/Telephone**

**Teresa Montgomery 497-8000**

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**Summary Explanation: Approval of the Docket of Claims.**

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input type="checkbox"/>            |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract/Agreement</b>      | <input type="checkbox"/>            |
| <b>Minutes</b>                 | <input type="checkbox"/>            |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input checked="" type="checkbox"/> |
| <b>Other</b>                   | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**  
**Approval**

|                        |                          |                 |                          |               |                          |                |                          |                |                          |
|------------------------|--------------------------|-----------------|--------------------------|---------------|--------------------------|----------------|--------------------------|----------------|--------------------------|
| <b>Motion Made by:</b> |                          |                 |                          |               |                          |                |                          |                |                          |
| <b>Torjusen</b>        | <input type="checkbox"/> | <b>Martin</b>   | <input type="checkbox"/> | <b>George</b> | <input type="checkbox"/> | <b>Jackson</b> | <input type="checkbox"/> | <b>Vaughan</b> | <input type="checkbox"/> |
| <b>Anderson</b>        | <input type="checkbox"/> | <b>Colledge</b> | <input type="checkbox"/> |               |                          |                |                          |                |                          |

|                        |                          |                 |                          |               |                          |                |                          |                |                          |
|------------------------|--------------------------|-----------------|--------------------------|---------------|--------------------------|----------------|--------------------------|----------------|--------------------------|
| <b>Second Made by:</b> |                          |                 |                          |               |                          |                |                          |                |                          |
| <b>Torjusen</b>        | <input type="checkbox"/> | <b>Martin</b>   | <input type="checkbox"/> | <b>George</b> | <input type="checkbox"/> | <b>Jackson</b> | <input type="checkbox"/> | <b>Vaughan</b> | <input type="checkbox"/> |
| <b>Anderson</b>        | <input type="checkbox"/> | <b>Colledge</b> | <input type="checkbox"/> |               |                          |                |                          |                |                          |

| <b>Voted as follows:</b> |                 | <b>Ayes</b>              | <b>Nays</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | <b>Torjusen</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | <b>Martin</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | <b>George</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | <b>Jackson</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | <b>Vaughan</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | <b>Anderson</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | <b>Colledge</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 000-2019**

**WHEREAS**, Miss. Code Ann. 21-39-9 requires governing authority to review all unpaid claims and determine if there is an obligation. An obligation exists if the related materials and supplies were properly contracted for and received by the municipality; and

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that Docket of Claims is hereby approved, provided that all entries thereon are true, correct, properly entered and not fraudulent.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary.

Motion was made by **BLANK** seconded by **BLANK** and the following vote was recorded:

**AYES:**

**NAYS:**

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**MAYOR**

**ATTEST:**

---

**CITY CLERK**

**BLANK** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of December 3, 2019.

| Fund | Name of Claimant                                                                   | Trans #                                     | Release Date | Claim Date              | Claim Number       | Check Number | Claim Amount | Approved/Disapproved |
|------|------------------------------------------------------------------------------------|---------------------------------------------|--------------|-------------------------|--------------------|--------------|--------------|----------------------|
| 001  | SOUTHERN PEST CONTROL INC<br>Account Number<br>001-092-698                         | 200485                                      | 12/03/2019   | 11/19/2019              |                    |              | 403.30       |                      |
|      |                                                                                    | Description<br>CITY FACILITIES              |              | Invoice #<br>352331     | Date<br>11/18/2019 | P.O.         | Amount       | 403.30               |
| 001  | C SPIRE WIRELESS<br>Account Number<br>001-100-605                                  | 200486                                      | 12/03/2019   | 11/19/2019              |                    |              | 535.84       |                      |
|      |                                                                                    | Description<br>POLICE CELLS                 |              | Invoice #<br>0032680896 | Date<br>10/12/2019 | P.O.         | Amount       | 535.84               |
| 001  | AT&T<br>Account Number<br>001-092-605                                              | 200493                                      | 12/03/2019   | 11/20/2019              |                    |              | 240.45       |                      |
|      |                                                                                    | Description<br>MONTHLY SERVICE              |              | Invoice #<br>2284972172 | Date<br>11/14/2019 | P.O.         | Amount       | 240.45               |
| 001  | AT&T<br>Account Number<br>001-092-605                                              | 200494                                      | 12/03/2019   | 11/20/2019              |                    |              | 144.43       |                      |
|      |                                                                                    | Description<br>MONTHLY SERVICE              |              | Invoice #<br>2284977070 | Date<br>11/14/2019 | P.O.         | Amount       | 144.43               |
| 001  | AT&T<br>Account Number<br>001-100-699                                              | 200495                                      | 12/03/2019   | 11/20/2019              |                    |              | 36.29        |                      |
|      |                                                                                    | Description<br>NCIC TELECOM                 |              | Invoice #<br>2284970262 | Date<br>11/14/2019 | P.O.         | Amount       | 36.29                |
| 001  | SUNBELT FIRE INC<br>Account Number<br>001-161-639<br>001-161-639<br>001-161-639    | 200501                                      | 12/03/2019   | 11/22/2019              |                    |              | 593.25       |                      |
|      |                                                                                    | Description<br>TRAVEL: COMPRESSOR REPAIR    |              | Invoice #<br>121361     | Date<br>11/18/2019 | P.O.         | Amount       | 367.25               |
|      |                                                                                    | LABOR: COMPRESSOR REPAIR                    |              | 121361                  | 11/18/2019         |              |              | 175.00               |
|      |                                                                                    | PARTS: COMPRESSOR REPAIR                    |              | 121361                  | 11/18/2019         |              |              | 51.00                |
| 001  | JACKSON COUNTY BOARD OF SUPERVISORS<br>Account Number<br>001-092-697               | 200502                                      | 12/03/2019   | 11/22/2019              |                    |              | 500.00       |                      |
|      |                                                                                    | Description<br>ANIMAL SHELTER FEE FY 2020   |              | Invoice #<br>11132019   | Date<br>11/13/2019 | P.O.         | Amount       | 500.00               |
| 001  | FOSTERS A/C & HEATING INC<br>Account Number<br>001-100-635<br>001-161-635          | 200503                                      | 12/03/2019   | 11/22/2019              |                    |              | 615.00       |                      |
|      |                                                                                    | Description<br>DISPATCH: #6 PULL-CLN COILS  |              | Invoice #<br>P1057150E  | Date<br>10/28/2019 | P.O.         | Amount       | 390.00               |
|      |                                                                                    | WFD: SERV CALL, FREON 5LBS                  |              | W1057997                | 11/08/2019         |              |              | 225.00               |
| 001  | BENJAMIN N MCQUAGGE<br>Account Number<br>001-161-681<br>001-161-525<br>001-161-681 | 200505                                      | 12/03/2019   | 11/22/2019              |                    |              | 200.33       |                      |
|      |                                                                                    | Description<br>PER DIEM REIMB: SCHOOL FL    |              | Invoice #<br>11082019   | Date<br>11/12/2019 | P.O.         | Amount       | 104.14               |
|      |                                                                                    | REIMB FUEL: FM CARD NOT WRKG                |              | 11082019                | 11/12/2019         |              |              | 92.44                |
|      |                                                                                    | TOLL ROAD FEE: FL                           |              | 11082019                | 11/12/2019         |              |              | 3.75                 |
| 001  | DAVID T BEVER<br>Account Number<br>001-161-525                                     | 200506                                      | 12/03/2019   | 11/22/2019              |                    |              | 60.00        |                      |
|      |                                                                                    | Description<br>REIMB FUEL: FM CARD NOT WRKG |              | Invoice #<br>11082019   | Date<br>11/12/2019 | P.O.         | Amount       | 60.00                |
| 001  | GLOBALSTAR<br>Account Number<br>001-092-605                                        | 200517                                      | 12/03/2019   | 11/22/2019              |                    |              | 87.43        |                      |
|      |                                                                                    | Description<br>MONTHLY SERVICE              |              | Invoice #<br>0010811629 | Date<br>11/16/2019 | P.O.         | Amount       | 87.43                |

| Fund | Name of Claimant                   | Trans #                        | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|------|------------------------------------|--------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 001  | AT&T                               | 200520                         | 12/03/2019   | 11/25/2019 |              |              | 3,295.52     |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-092-605                        | MONTHLY SERVICE                |              | 2284978001 | 11/14/2019   |              |              | 3,295.52             |
| 001  | FUELMAN                            | 200521                         | 12/03/2019   | 11/25/2019 |              |              | 2,635.11     |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-090-525                        | UNL FUEL                       |              | NP57262927 | 11/18/2019   |              |              | 94.40                |
|      | 001-100-525                        | UNL FUEL                       |              | NP57262927 | 11/18/2019   |              |              | 1,933.07             |
|      | 001-161-525                        | UNL & DSL FUEL                 |              | NP57262927 | 11/18/2019   |              |              | 448.54               |
|      | 001-170-525                        | UNL & DSL FUEL                 |              | NP57262927 | 11/18/2019   |              |              | 132.71               |
|      | 001-205-525                        | UNL FUEL                       |              | NP57262927 | 11/18/2019   |              |              | 26.39                |
| 001  | SBM REPORTING LLC                  | 200523                         | 12/03/2019   | 11/25/2019 |              |              | 175.00       |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-090-698                        | 11/07/19 PLANNING MTG          |              | MB1063     | 11/21/2019   |              |              | 175.00               |
| 001  | ROBERT JOHNSON                     | 200524                         | 12/03/2019   | 11/25/2019 |              |              | 60.00        |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-170-502                        | REFEREE 2 PLAYOFF GAMES        |              | 11132019   | 11/25/2019   |              |              | 60.00                |
| 001  | PATRICK EVANS                      | 200525                         | 12/03/2019   | 11/25/2019 |              |              | 60.00        |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-170-502                        | REFEREE 2 PLAYOFF GAMES        |              | 11132019   | 11/25/2019   |              |              | 60.00                |
| 001  | TIMOTHY SCOTT WARREN               | 200526                         | 12/03/2019   | 11/25/2019 |              |              | 60.00        |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-170-502                        | REFEREE 2 PLAYOFF GAMES        |              | 11132019   | 11/25/2019   |              |              | 60.00                |
| 001  | PYRO SHOWS INC                     | 200527                         | 12/03/2019   | 11/25/2019 |              |              | 8,400.00     |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-170-596                        | CHRISTMAS LIGHT THE NIGHT SHOW |              | 12072019   | 11/25/2019   |              |              | 8,400.00             |
| 001  | EASTERN SHORE INFLATABLES INC      | 200528                         | 12/03/2019   | 11/25/2019 |              |              | 7,500.00     |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-170-512                        | WINTER WONDERLAND SNOW PARTY   |              | 12072019   | 11/25/2019   |              |              | 7,500.00             |
| 001  | UNITED PARCEL SERVICE              | 200529                         | 12/03/2019   | 11/25/2019 |              |              | 16.94        |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-092-607                        | PKG TO TASER INTL              |              | 0Y99492469 | 11/16/2019   |              |              | 16.94                |
| 001  | SEYMOUR ENGINEERING PLLC           | 200533                         | 12/03/2019   | 11/25/2019 |              |              | 140.00       |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-094-603                        | INSPECT TRAIL LIGHTING         |              | 7347       | 11/20/2019   |              |              | 140.00               |
| 001  | SINGING RIVER ELECTRIC COOPERATIVE | 200535                         | 12/03/2019   | 11/25/2019 |              |              | 545.60       |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-161-631                        | BROWN FD 95237002              |              | 11142019   | 11/21/2019   |              |              | 218.55               |
|      | 001-161-631                        | MARTIN BLUFF FD 58380001       |              | 11162019   | 11/22/2019   |              |              | 199.22               |
|      | 001-201-629                        | SIGNAL LIGHTS 17546            |              | 11162019   | 11/22/2019   |              |              | 32.08                |
|      | 001-092-631                        | CITY LIMIT SIGN 17546          |              | 11162019   | 11/22/2019   |              |              | 25.70                |

| Fund | Name of Claimant                   | Trans #                        | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|------|------------------------------------|--------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 001  | SINGING RIVER ELECTRIC COOPERATIVE | 200535                         | 12/03/2019   | 11/25/2019 |              |              | 545.60       | (CONTINUED)          |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-100-631                        | MBLUFF SUB STN 58521002        |              | 11162019   | 11/22/2019   |              |              | 70.05                |
| 001  | ALABAMA MEDIA GROUP                | 200541                         | 12/03/2019   | 11/25/2019 |              |              | 17.52        |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-090-615                        | PUBLIC NOTICE: GPC #19-22 VAR  |              | 0009405649 | 11/17/2019   | 200169       |              | 17.52                |
| 001  | MID SOUTH UNIFORM & SUPPLY INC     | 200542                         | 12/03/2019   | 11/25/2019 |              |              | 1,385.00     |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-100-559                        | SBA ARMOR SX02 LVL 2: SLOVER   |              | 598726     | 11/11/2019   | 200031       |              | 600.00               |
|      | 001-100-559                        | SBA ARMOR SX02 LVL 2: WARD     |              | 598726     | 11/11/2019   | 200031       |              | 600.00               |
|      | 001-100-559                        | M1 CONCEALABLE CARRIER: WARD   |              | 598726     | 11/11/2019   | 200031       |              | 75.00                |
|      | 001-100-559                        | M1 CONCEALABLE CARRIER: SLOVER |              | 598726     | 11/11/2019   | 200031       |              | 75.00                |
|      | 001-100-559                        | SBA SOFT TRAUMA PLATE: WARD    |              | 598726     | 11/11/2019   | 200031       |              | 17.50                |
|      | 001-100-559                        | SBA SOFT TRAUMA PLATE: SLOVER  |              | 598726     | 11/11/2019   | 200031       |              | 17.50                |
| 001  | DIXIE SEAT COVER SHOP              | 200543                         | 12/03/2019   | 11/25/2019 |              |              | 80.00        |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-170-512                        | REPR BANNER-GROMMET:CHRISTMAS  |              | 23135      | 11/12/2019   | 200144       |              | 40.00                |
|      | 001-170-512                        | REPR BANNER-GROMMET:CRUISIN    |              | 23135      | 11/12/2019   | 200144       |              | 40.00                |
| 001  | SOUTHERN PIPE & SUPPLY             | 200544                         | 12/03/2019   | 11/25/2019 |              |              | 18.56        |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-170-559                        | 4OZ CLEAR RG PVC CEMENT        |              | 3671901-00 | 11/20/2019   | 200175       |              | 3.80                 |
|      | 001-170-559                        | 2-1/2 SCH 40 PVC SLIP CAP (4)  |              | 3671901-00 | 11/20/2019   | 200175       |              | 14.76                |
| 001  | GOODYEAR AUTO CENTER               | 200546                         | 12/03/2019   | 11/25/2019 |              |              | 547.12       |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-100-638                        | SET P225/60R18 99W EAG:U #54   |              | 214839     | 11/13/2019   | 200161       |              | 547.12               |
| 001  | STAPLES BUSINESS ADVANTAGE DEPT    | ATL 200548                     | 12/03/2019   | 11/25/2019 |              |              | 500.04       |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-040-500                        | LEXMARK 501H BLK TONER         |              | 3429770183 | 11/01/2019   | 200119       |              | 149.61               |
|      | 001-040-500                        | LEXMARK 500ZG IMAGINE RTN KIT  |              | 3430447990 | 11/07/2019   | 200119       |              | 52.49                |
|      | 001-100-500                        | LEXMARK 501H BLK TONER (2)     |              | 3430447992 | 11/07/2019   | 200145       |              | 254.98               |
|      | 001-100-500                        | SCOTCH TAPE GRIP DISPENSER (2) |              | 3430447993 | 11/07/2019   | 200153       |              | 16.38                |
|      | 001-100-500                        | SCOTCH SHIP TAPE 6/ROLLS (2)   |              | 3430447993 | 11/07/2019   | 200153       |              | 26.58                |
| 001  | G & O SUPPLY CO, INC               | 200551                         | 12/03/2019   | 11/25/2019 |              |              | 3,534.40     |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-201-576                        | 42X20 HDPE SOLID PIPE LF (80)  |              | G11828     | 11/15/2019   | 200172       |              | 3,534.40             |
| 001  | SENTRY SPORTS A TO Z LLC           | 200552                         | 12/03/2019   | 11/25/2019 |              |              | 10,950.00    |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-201-751                        | TYPE D STREET POLE NILAND      |              | 219        | 11/13/2019   | 191119       |              | 10,950.00            |
| 001  | ECONOMY BOOTS SALES & SERVICE      | 200553                         | 12/03/2019   | 11/25/2019 |              |              | 100.00       |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-100-535                        | SZ DUTY BOOTS: REID, TYLER     |              | 18408      | 11/13/2019   | 200162       |              | 100.00               |

| Fund       | Name of Claimant        | Trans # | Release Date               | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|------------|-------------------------|---------|----------------------------|------------|--------------|--------------|--------------|----------------------|
| 001        | FUELMAN                 | 200567  | 12/03/2019                 | 11/26/2019 |              |              | 3,045.02     |                      |
|            | Account Number          |         | Description                |            | Invoice #    | Date         | P.O.         | Amount               |
|            | 001-090-525             |         | UNL FUEL                   |            | NP57291522   | 11/25/2019   |              | 27.52                |
|            | 001-092-525             |         | UNL FUEL                   |            | NP57291522   | 11/25/2019   |              | 27.57                |
|            | 001-100-525             |         | UNL FUEL                   |            | NP57291522   | 11/25/2019   |              | 2,190.00             |
|            | 001-161-525             |         | UNL & DSL FUEL             |            | NP57291522   | 11/25/2019   |              | 535.63               |
|            | 001-161-638             |         | AUTO SUPPLY                |            | NP57291522   | 11/25/2019   |              | .85                  |
|            | 001-170-525             |         | UNL & DSL FUEL             |            | NP57291522   | 11/25/2019   |              | 169.01               |
|            | 001-205-525             |         | UNL & DSL FUEL             |            | NP57291522   | 11/25/2019   |              | 94.44                |
| 001        | GRAND VIEW SECURITY LLC | 200573  | 12/03/2019                 | 11/26/2019 |              |              | 199.00       |                      |
|            | Account Number          |         | Description                |            | Invoice #    | Date         | P.O.         | Amount               |
|            | 001-170-559             |         | ESC CENTRAL GSM ALARM COMM |            | 1911141206   | 11/26/2019   |              | 199.00               |
| FUND TOTAL | 1 Claims                | to      | Checks                     | 33 Total   | 46,681.15    | Manual       | Held         | Total 46,681.15      |



| Fund                  | Name of Claimant                                             | Trans #                    | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|--------------------------------------------------------------|----------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 130                   | RIGHT OF WAY TECHNOLOGY INC<br>Account Number<br>130-130-770 | 200532                     | 12/03/2019   | 11/25/2019 |              |              | 1,200.00     |                      |
|                       |                                                              | Description                |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       |                                                              | RELOCATION ASST REVIEW (2) |              | 209        | 11/13/2019   |              |              | 1,200.00             |
| FUND TOTAL 130 Claims | to                                                           | Checks                     | 1 Total      | 1,200.00   | Manual       | Held         | Total        | 1,200.00             |

| Fund                  | Name of Claimant                    | Trans # | Release Date                    | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|-------------------------------------|---------|---------------------------------|------------|--------------|--------------|--------------|----------------------|
| 157                   | BARNEYS POLICE AND HUNTING SUPPLIES | 200550  | 12/03/2019                      | 11/25/2019 |              |              | 7,617.50     |                      |
|                       | Account Number                      |         | Description                     | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       | 157-100-799                         |         | SOFT TRAUMA PLATE (11)          | 31839      | 11/15/2019   | 191124       | 192.50       |                      |
|                       | 157-100-799                         |         | CARRIER M1 CONCEAL TAILS        | 31839      | 11/15/2019   | 191124       | 75.00        |                      |
|                       | 157-100-799                         |         | BALLISTICS SX02 MALE PANEL (10) | 31839      | 11/15/2019   | 191124       | 6,000.00     |                      |
|                       | 157-100-799                         |         | CARRIER M1 CONCEAL TAILS (10)   | 31839      | 11/15/2019   | 191124       | 750.00       |                      |
|                       | 157-100-799                         |         | BALLISTICS SX02 FEM-U PANEL     | 31839      | 11/15/2019   | 191124       | 600.00       |                      |
| FUND TOTAL 157 Claims | to                                  | Checks  | 1 Total                         | 7,617.50   | Manual       | Held         | Total        | 7,617.50             |

| Fund                  | Name of Claimant                | Trans #                     | Release Date | Claim Date         | Claim Number    | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|---------------------------------|-----------------------------|--------------|--------------------|-----------------|--------------|--------------|----------------------|
| 172                   | JACKSON-GEORGE REGIONAL LIBRARY | 200507                      | 12/03/2019   | 11/22/2019         |                 |              | 1,725.74     |                      |
|                       | Account Number 172-350-650      | Description LIBRARY SUPPORT |              | Invoice # NOV 2019 | Date 11/19/2019 | P.O.         | Amount       |                      |
|                       |                                 |                             |              |                    |                 |              | 1,725.74     |                      |
| FUND TOTAL 172 Claims | to                              | Checks                      | 1 Total      | 1,725.74           | Manual          | Held         | Total        | 1,725.74             |

| Fund                  | Name of Claimant | Trans #                       | Release Date | Claim Date | Claim Number  | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|------------------|-------------------------------|--------------|------------|---------------|--------------|--------------|----------------------|
| 176                   | AD2 INC          | 200487                        | 12/03/2019   | 11/19/2019 |               |              | 501.50       |                      |
|                       | Account Number   | Description                   | Invoice #    | Date       | P.O.          | Amount       |              |                      |
|                       | 176-170-699      | HOSTING FEE NOV 2019          | 3547         | 11/15/2019 |               |              | 36.50        |                      |
|                       | 176-170-699      | SHOPPING CART FEE NOV 2019    | 3547         | 11/15/2019 |               |              | 115.00       |                      |
|                       | 176-170-699      | WEB SITE MAINT:10/15-11/14/19 | 3547         | 11/15/2019 |               |              | 350.00       |                      |
| 176                   | AT&T             | 200496                        | 12/03/2019   | 11/20/2019 |               |              | 52.05        |                      |
|                       | Account Number   | Description                   | Invoice #    | Date       | P.O.          | Amount       |              |                      |
|                       | 176-170-605      | NOV 2019: SSP INTERNET        | 285615432    | 11/11/2019 |               |              | 52.05        |                      |
| 176                   | AT&T             | 200497                        | 12/03/2019   | 11/20/2019 |               |              | 159.10       |                      |
|                       | Account Number   | Description                   | Invoice #    | Date       | P.O.          | Amount       |              |                      |
|                       | 176-170-605      | MONTHLY SERVICE               | 2284972244   | 11/14/2019 |               |              | 159.10       |                      |
| 176                   | FUELMAN          | 200568                        | 12/03/2019   | 11/26/2019 |               |              | 34.47        |                      |
|                       | Account Number   | Description                   | Invoice #    | Date       | P.O.          | Amount       |              |                      |
|                       | 176-170-525      | UNL FUEL                      | NP57291522   | 11/25/2019 |               |              | 34.47        |                      |
| FUND TOTAL 176 Claims |                  | to                            | Checks       | 4 Total    | 747.12 Manual | Held         | Total        | 747.12               |

| Fund                     | Name of Claimant                                            | Trans #  | Release Date | Claim Date        | Claim Number    | Check Number | Claim Amount | Approved/Disapproved |
|--------------------------|-------------------------------------------------------------|----------|--------------|-------------------|-----------------|--------------|--------------|----------------------|
| 351                      | MAGNOLIA CONSTRUCTION CO LLC<br>Account Number 351-726-768  | 200534   | 12/03/2019   | 11/25/2019        |                 |              | 63,920.52    |                      |
|                          | Description CONSTRUCTION 84.22%                             |          |              | Invoice # 5       | Date 11/20/2019 | P.O.         | Amount       | 63,920.52            |
| 351                      | SAMPLE HICKS & ASSOCIATES INC<br>Account Number 351-726-601 | 200537   | 12/03/2019   | 11/25/2019        |                 |              | 5,900.00     |                      |
|                          | Description CONSTRUCTION 75% COMPLETE                       |          |              | Invoice # 1119-03 | Date 11/22/2019 | P.O.         | Amount       | 5,900.00             |
| 351                      | SEYMOUR ENGINEERING PLLC<br>Account Number 351-726-787      | 200538   | 12/03/2019   | 11/25/2019        |                 |              | 9,037.20     |                      |
|                          | Description RES PROJ REP-CONSTR ADMIN                       |          |              | Invoice # 7346    | Date 11/20/2019 | P.O.         | Amount       | 9,037.20             |
| FUND TOTAL 351 Claims to |                                                             | Checks 3 | Total        | 78,857.72         | Manual          |              | Held         | Total 78,857.72      |

| Fund                  | Name of Claimant           | Trans #                    | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|----------------------------|----------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 360                   | SEYMOUR ENGINEERING PLLC   | 200539                     | 12/03/2019   | 11/25/2019 |              |              | 12,000.00    |                      |
|                       | Account Number 360-726-762 | Description                |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       |                            | VIDEO EXISTING SWR INF 50% |              | 7344       | 11/20/2019   |              |              | 12,000.00            |
| FUND TOTAL 360 Claims | to                         | Checks                     | 1 Total      | 12,000.00  | Manual       | Held         | Total        | 12,000.00            |

| Fund | Name of Claimant                   | Trans #                        | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|------|------------------------------------|--------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 400  | AT&T                               | 200488                         | 12/03/2019   | 11/19/2019 |              |              | 61.61        |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-605                        | MONTHLY SERVICE                |              | 2284972276 | 11/06/2019   |              |              | 61.61                |
| 400  | CITY OF GAUTIER                    | 200498                         | 12/03/2019   | 11/22/2019 |              |              | 43,427.11    |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-680-821                        | ST LNS #3 90/57 SWR            |              | 11122019   | 11/12/2019   |              |              | 7,877.45             |
|      | 400-680-822                        | ST LNS #4 90/57 WTR            |              | 11122019   | 11/12/2019   |              |              | 10,948.67            |
|      | 400-680-822                        | ST LNS #4 90/57 SWR            |              | 11122019   | 11/12/2019   |              |              | 9,019.22             |
|      | 400-680-823                        | ST LNS #5 ALLEN RD             |              | 11122019   | 11/12/2019   |              |              | 2,149.95             |
|      | 400-680-824                        | ST LNS #6 OLD SPAN TR          |              | 11122019   | 11/12/2019   |              |              | 3,765.83             |
|      | 400-680-825                        | ST LNS #7 OLD SPAN TR          |              | 11122019   | 11/12/2019   |              |              | 9,665.99             |
| 400  | ARISTA INFORMATION SYSTEMS INC     | 200499                         | 12/03/2019   | 11/22/2019 |              |              | 3,628.05     |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-698                        | OCT 2019 STATEMENTS            |              | 28599      | 11/14/2019   |              |              | 1,128.05             |
|      | 400-650-698                        | OCT 2019 POSTAGE               |              | 1425201911 | 11/14/2019   |              |              | 2,500.00             |
| 400  | 2018 BOND DEBT SERVICE FUND        | 200500                         | 12/03/2019   | 11/22/2019 |              |              | 25,000.00    |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-900-950                        | DEC 2019: 2018 BOND DS         |              | 12012019   | 12/01/2019   |              |              | 25,000.00            |
| 400  | MSC 7511                           | 200504                         | 12/03/2019   | 11/21/2019 |              |              | 166.49       |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-698                        | FGYJ00-01 RENTAL FEE           |              | INV3373049 | 11/09/2019   |              |              | 166.49               |
| 400  | AT&T                               | 200518                         | 12/03/2019   | 11/22/2019 |              |              | 209.29       |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-605                        | MONTHLY SERVICE                |              | 2284975234 | 11/14/2019   |              |              | 209.29               |
| 400  | FUELMAN                            | 200522                         | 12/03/2019   | 11/25/2019 |              |              | 76.59        |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-525                        | UNL FUEL                       |              | NP57262927 | 11/18/2019   |              |              | 76.59                |
| 400  | MISSISSIPPI 811 INC                | 200530                         | 12/03/2019   | 11/25/2019 |              |              | 3,557.62     |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-698                        | 2020 BILLING (1728)            |              | 414        | 11/12/2019   |              |              | 3,039.47             |
|      | 400-651-698                        | UFDP BOARD FEE (1728)          |              | 414        | 11/12/2019   |              |              | 86.40                |
|      | 400-651-698                        | FAX CHARGE (1727)              |              | 414        | 11/12/2019   |              |              | 431.75               |
| 400  | SEYMOUR ENGINEERING PLLC           | 200531                         | 12/03/2019   | 11/25/2019 |              |              | 555.00       |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-603                        | SERVS: DRAINAGE ISSUES         |              | 7348       | 11/20/2019   |              |              | 280.00               |
|      | 400-650-603                        | SERVS: WW FLOW MONITORING DESN |              | 7348       | 11/20/2019   |              |              | 275.00               |
| 400  | SINGING RIVER ELECTRIC COOPERATIVE | 200536                         | 12/03/2019   | 11/25/2019 |              |              | 2,471.27     |                      |
|      | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-631                        | LIFT STATIONS 20649            |              | 11142019   | 11/21/2019   |              |              | 848.56               |
|      | 400-651-631                        | LIFT STATIONS 28779            |              | 11142019   | 11/21/2019   |              |              | 93.62                |
|      | 400-651-631                        | SCHOONER WELL 20688            |              | 11112019   | 11/19/2019   |              |              | 1,263.01             |

| Fund | Name of Claimant                    | Trans #                        | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|------|-------------------------------------|--------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 400  | SINGING RIVER ELECTRIC COOPERATIVE  | 200536                         | 12/03/2019   | 11/25/2019 |              |              | 2,471.27     | (CONTINUED)          |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-631                         | LIFT STATIONS 20688            |              | 11112019   | 11/19/2019   |              |              | 266.08               |
| 400  | SOUTHERN PIPE & SUPPLY              | 200545                         | 12/03/2019   | 11/25/2019 |              |              | 1,729.68     |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-583                         | 2 SCH40 PVC BALL VALVE (12)    |              | 3591009-00 | 11/05/2019   | 200094       |              | 123.84               |
|      | 400-651-583                         | 2 THRD BALL VALVE (12)         |              | 3591009-00 | 11/05/2019   | 200094       |              | 1,169.52             |
|      | 400-651-583                         | CRDT: 2 THRD BALL VALVE (12)   |              | 3676132-00 | 11/21/2019   | 200094       |              | -1,169.52            |
|      | 400-651-583                         | 2 THRD BALL VALVE (12)         |              | 3676132-00 | 11/21/2019   | 200094       |              | 619.80               |
|      | 400-651-583                         | 2-1/2X24 MH RISER (4)          |              | 3598832-00 | 11/18/2019   | 200118       |              | 986.04               |
| 400  | M T DEASON COMPANY INC              | 200547                         | 12/03/2019   | 11/25/2019 |              |              | 459.18       |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-581                         | #4 HF LOCKS W/CAP (100)        |              | 84105      | 11/15/2019   | 200170       |              | 450.00               |
|      | 400-651-581                         | FREIGHT                        |              | 84105      | 11/15/2019   | 200170       |              | 9.18                 |
| 400  | STAPLES BUSINESS ADVANTAGE DEPT ATL | 200549                         | 12/03/2019   | 11/25/2019 |              |              | 323.54       |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-500                         | LEGAL FILE FOLDER 100/BX (4)   |              | 3429624604 | 10/31/2019   | 200113       |              | 60.96                |
|      | 400-650-500                         | BIC 60/PK BLUE PENS            |              | 3429624604 | 10/31/2019   | 200113       |              | 5.49                 |
|      | 400-650-500                         | BIC WHITE-OUT 4/PK             |              | 3429624604 | 10/31/2019   | 200113       |              | 12.29                |
|      | 400-650-500                         | COUNTERFEIT PENS 3/PK (2)      |              | 3429624604 | 10/31/2019   | 200113       |              | 2.00                 |
|      | 400-650-500                         | FNGR TIP SORT KWIK 3/PK        |              | 3429624604 | 10/31/2019   | 200113       |              | 4.19                 |
|      | 400-650-500                         | HP952 COLOR CMY CARTRIDGE 3/PK |              | 3429624604 | 10/31/2019   | 200113       |              | 66.01                |
|      | 400-650-500                         | LEXMARK 501H U&H BLK TONER     |              | 3429624604 | 10/31/2019   | 200113       |              | 149.61               |
|      | 400-650-559                         | 32GB FLASH MEMORY              |              | 3430369026 | 11/06/2019   | 200113       |              | 22.99                |
| 400  | LYMAN WELL COMPANY                  | 200554                         | 12/03/2019   | 11/25/2019 |              |              | 11,040.00    |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-581                         | LABOR REMV SAND: BEASLEY WELL  |              | 10407      | 11/14/2019   | 200149       |              | 11,040.00            |
| 400  | J H WRIGHT & ASSOCIATES INC         | 200555                         | 12/03/2019   | 11/25/2019 |              |              | 1,212.00     |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-584                         | DUPLEX FLOAT CONTROLLER (2)    |              | 419707     | 11/15/2019   | 200165       |              | 1,000.00             |
|      | 400-651-584                         | SHIPPING: LS SPARES            |              | 419707     | 11/15/2019   | 200165       |              | 20.00                |
|      | 400-651-584                         | SQUARE D MOTOR HEATER (6)      |              | 419777     | 11/18/2019   | 200109       |              | 132.00               |
|      | 400-651-584                         | MISSION PW429 TRANSFORMER (3)  |              | 419815     | 11/19/2019   | 200164       |              | 45.00                |
|      | 400-651-584                         | SHIPPING: SCADA                |              | 419815     | 11/19/2019   | 200164       |              | 15.00                |
| 400  | CITY OF GAUTIER                     | 200566                         | 12/03/2019   | 11/26/2019 |              |              | 129,990.84   |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-000-104                         | OCT 2019 GARBAGE PMTS          |              | 10312019   | 10/31/2019   |              |              | 129,990.84           |
| 400  | FUELMAN                             | 200569                         | 12/03/2019   | 11/26/2019 |              |              | 108.11       |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-525                         | UNL FUEL                       |              | NP57291522 | 11/25/2019   |              |              | 108.11               |
| 400  | 2018 BOND CONTINGENCY FUND          | 200570                         | 12/03/2019   | 11/26/2019 |              |              | 5,000.00     |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-900-950                         | FY20 CONTINGENCY FUNDING       |              | 12012019   | 12/01/2019   |              |              | 5,000.00             |



| Fund                     | Name of Claimant                                              | Trans #                   | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|--------------------------|---------------------------------------------------------------|---------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 400                      | 2018 BOND DEPRECIATION FUND<br>Account Number<br>400-900-950  | 200571                    | 12/03/2019   | 11/26/2019 |              |              | 5,000.00     |                      |
|                          |                                                               | Description               |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                          |                                                               | FY20 DEPRECIATION FUNDING |              | 12012018   | 12/01/2018   |              |              | 5,000.00             |
| 400                      | HUB INTERNATIONAL GULF SOUTH<br>Account Number<br>400-650-625 | 200572                    | 12/03/2019   | 11/26/2019 |              |              | 43,805.19    |                      |
|                          |                                                               | Description               |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                          |                                                               | WELLS & IONIZATION PLANT  |              | GAUTIER-02 | 11/26/2019   |              |              | 43,805.19            |
| FUND TOTAL 400 Claims to |                                                               | Checks                    | 20 Total     | 277,821.57 | Manual       |              |              |                      |
|                          |                                                               |                           |              |            |              | Held         |              | Total 277,821.57     |

Release date from 12/03/2019 thru 12/03/2019

## SUMMARY OF ALL FUNDS

|                     |    |        |          |                   |                   |       |                  |
|---------------------|----|--------|----------|-------------------|-------------------|-------|------------------|
| FUND 1 Claims       | to | Checks | 33 Total | 46,681.15 Manual  | Held              | Total | 46,681.15        |
| FUND 130 Claims     | to | Checks | 1 Total  | 1,200.00 Manual   | Held              | Total | 1,200.00         |
| FUND 157 Claims     | to | Checks | 1 Total  | 7,617.50 Manual   | Held              | Total | 7,617.50         |
| FUND 172 Claims     | to | Checks | 1 Total  | 1,725.74 Manual   | Held              | Total | 1,725.74         |
| FUND 176 Claims     | to | Checks | 4 Total  | 747.12 Manual     | Held              | Total | 747.12           |
| FUND 351 Claims     | to | Checks | 3 Total  | 78,857.72 Manual  | Held              | Total | 78,857.72        |
| FUND 360 Claims     | to | Checks | 1 Total  | 12,000.00 Manual  | Held              | Total | 12,000.00        |
| FUND 400 Claims     | to | Checks | 20 Total | 277,821.57 Manual | Held              | Total | 277,821.57       |
| Total for all Funds |    |        | Checks   | 64 Total          | 426,650.80 Manual | Held  | Total 426,650.80 |

**CITY OF GAUTIER**  
**Consent Agenda Item #1**  
**Fact Sheet**

**Council Meeting:**  
**Title:**

**December 3, 2019**  
**Authorization to remove two firearms from Gautier Police Department's inventory for proper disposal**

**Introduced by:**  
**Contact Person/Telephone**

**Chief Dante Elbin 497-8007**

**Summary Explanation: Authorization to remove a Clerke revolver and a Glock pistol from the Police Department's Inventory for proper disposal.**

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input type="checkbox"/>            |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract/Agreement</b>      | <input checked="" type="checkbox"/> |
| <b>Minutes</b>                 | <input type="checkbox"/>            |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input checked="" type="checkbox"/> |
| <b>Other</b>                   | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**

**Approval**

**Motion Made by:**

**Torjusen** ☐ **Martin** ☐ **George** ☐ **Jackson** ☐ **Vaughan** ☐ **Anderson** ☐ **Colledge** ☐

**Second Made by:**

**Torjusen** ☐ **Martin** ☐ **George** ☐ **Jackson** ☐ **Vaughan** ☐ **Anderson** ☐ **Colledge** ☐

| <b>Voted as follows:</b> |                 | <b>Ayes</b>              | <b>Nays</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | <b>Torjusen</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | <b>Martin</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | <b>George</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | <b>Jackson</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | <b>Vaughan</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | <b>Anderson</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | <b>Colledge</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi the following:

**RESOLUTION NUMBER 000-2019**

**RESOLUTION OF THE CITY OF GAUTIER, MISSISSIPPI REMOVING A CLERKE REVOLVER AND A GLOCK PISTOL FROM POLICE DEPARTMENT INVENTORY, FINDING THAT THEY HAVE NO VALUE, AND APPROVING DISPOSAL**

**WHEREAS**, the Gautier Police Department is requesting the following to be removed from inventory, found to have no value, and to be disposed of as indicated herein;

| <b><u>ITEM</u></b>  | <b><u>INVENTORY NUMBER</u></b> |
|---------------------|--------------------------------|
| (1) Clerke Revolver | 2977                           |
| (1) Glock Pistol    | 1415                           |

**WHEREAS**, these two firearms were forfeited, surrendered, or confiscated by the Gautier Police Department; and

**WHEREAS**, an order to forfeit these firearms to the City of Gautier was signed by Gautier Municipal Court Judge and placed on the Police Department's inventory; and

**WHEREAS**, the Mayor and Members of the Council have determined that, given these items have missing serial numbers and/or altered serial numbers, these items have no value, and that removal from inventory and disposal, is in the best interest of the City of Gautier.

**WHEREAS**, City Staff requests authorization to dispose of the above items by destruction or, if appropriate, by discarding in the same manner as other municipal solid waste.

**BE IT, THEREFORE, RESOLVED** by the Mayor and Council of the City of Gautier, Mississippi that the above items are found to have no value, are hereby removed from inventory, and may be disposed of by destruction or, if appropriate, by discarding in the same manner as other municipal solid waste.

**BE IT, FURTHER, RESOLVED** that the Council authorizes the City Manager or City Clerk to execute all documents necessary for this purpose.

The motion to approve the foregoing resolution was made by **BLANK**, seconded by **BLANK**, and the following vote was recorded:

**AYES:**

**NAYS:**

**WHEREUPON**, the Mayor and Members of the Council of the City of Gautier, Mississippi, declared the motion carried and the Resolution adopted this the 3<sup>rd</sup> of December, 2019.

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**MAYOR**

**ATTEST:**

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**CITY CLERK**

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** Danny Selover, Police  
**Date:** 11/21/2019  
**Subject:** Authorization to remove a Clerke revolver and a Glock Pistol from the Police Department's inventory and for these firearms to be cut up and destroyed.

---

**REQUEST:**

City Council authorization is requested to remove and destroy one (1) Clerke revolver serial number 156751(city inventory number 2977) and one (1) Glock pistol, serial number AGA736 (city inventory number 1415) from the Police Department's inventory.

**BACKGROUND:**

These two firearms were found to be previously forfeited, surrendered or confiscated by the Gautier Police Department. An order to forfeit the firearms to the City of Gautier was signed by Gautier Municipal Court judge and placed on the police department's inventory.

**DISCUSSION:**

These two (2) firearms have either missing serial numbers and/or the serial number has been altered.

**RECOMMENDATION:**

Police Department staff recommends that City Council authorize the removal of these pistols from inventory and authorize the police department to destroy them.

**ATTACHMENTS:**

1. Image 1
2. Image 2
3. Image 3
4. Image 4















**CITY OF GAUTIER**  
**Consent Agenda Item #2**  
**Fact Sheet**

**Council Meeting:**  
**Title:**

**December 3, 2019**  
**Authorization to remove three (3) sets of rear window prisoner transport bars from the Police Department's Inventory and declare surplus**

**Introduced by:**  
**Contact Person/Telephone**

**Chief Dante Elbin 497-8007**

**Summary Explanation: Authorization to remove three (3) sets of rear window prisoner transport bars from the Police Department's Inventory and declare surplus**

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input checked="" type="checkbox"/> |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract/Agreement</b>      | <input type="checkbox"/>            |
| <b>Minutes</b>                 | <input type="checkbox"/>            |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input type="checkbox"/>            |
| <b>Other</b>                   | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**

**Approval**

|                 |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
|-----------------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|
| Motion Made by: |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
| Torjusen        | <input type="checkbox"/> | Martin | <input type="checkbox"/> | George | <input type="checkbox"/> | Jackson | <input type="checkbox"/> | Vaughan | <input type="checkbox"/> | Anderson | <input type="checkbox"/> | Colledge | <input type="checkbox"/> |

|                 |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
|-----------------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|
| Second Made by: |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
| Torjusen        | <input type="checkbox"/> | Martin | <input type="checkbox"/> | George | <input type="checkbox"/> | Jackson | <input type="checkbox"/> | Vaughan | <input type="checkbox"/> | Anderson | <input type="checkbox"/> | Colledge | <input type="checkbox"/> |

| <b>Voted as follows:</b> |                 | <b>Ayes</b>              | <b>Nays</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | <b>Torjusen</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | <b>Martin</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | <b>George</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | <b>Jackson</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | <b>Vaughan</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | <b>Anderson</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | <b>Colledge</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi the following:

**RESOLUTION NUMBER 000-2019**

**RESOLUTION OF THE CITY OF GAUTIER, MISSISSIPPI REMOVING THREE SETS OF REAR WINDOW PRISONER TRANSPORT BARS FROM THE INVENTORY OF GAUTIER POLICE DEPARTMENT AND TO DECLARE SURPLUS**

**WHEREAS**, the Gautier Police Department is requesting the following equipment be removed from inventory and declared surplus:

| <u>ITEM</u>                                | <u>INVENTORY NUMBER</u> |
|--------------------------------------------|-------------------------|
| (3) Sets of Window Prisoner Transport Bars | 1161                    |
|                                            | 1500                    |
|                                            | 1505                    |

**WHEREAS**, the Mayor and Members of the Council have determined that given the age and condition of the equipment, these item have no value, and therefore removal from inventory and declaring surplus is in the best interest of the City of Gautier.

**BE IT, THEREFORE, RESOLVED** that the Mayor and Council of the City of Gautier, Mississippi has determined that the equipment described above is hereby removed from inventory and declared surplus.

**BE IT, FURTHER, RESOLVED** that the Council authorizes the City Manager or City Clerk to execute all documents necessary for this purpose.

The motion to approve the foregoing resolution was made by **BLANK**, seconded by **BLANK**, and the following vote was recorded:

**AYES:**

**NAYS:**

**WHEREUPON**, the Mayor and Members of the Council of the City of Gautier, Mississippi, declared the motion carried and the Resolution adopted this the 3<sup>rd</sup> of December, 2019.

---

**MAYOR**

**ATTEST:**

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**CITY CLERK**

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager

**From:** Danny Selover, Police

**Date:** 11/22/2019

**Subject:** Authorization to remove three (3) sets of rear window prisoner transport bars from the Police Department's inventory.

---

**REQUEST:**

City Council authorization is requested to remove three (03) sets of rear window prisoner transport bars from the Police Department's inventory and to declare them as surplus.

**BACKGROUND:**

The Police Department has determined that, given the age and condition of these items, removal from inventory is in the best interest of the City of Gautier. City of Gautier inventory control numbers are 1161, 1500 and 1505 (No serial numbers).

**DISCUSSION:**

These window bars were purchased for the Ford Crown Victoria Police vehicles that we have previously declared surplus. These window bars will not work on our Dodge Chargers and are of no future use to the Gautier Police Department.

**RECOMMENDATION:**

Police Department staff recommends that City Council authorize the removal of these items from inventory and authorize them to be declared surplus.

**ATTACHMENTS:**

1. ID 1161
2. ID 1500
3. ID 1505











**CITY OF GAUTIER**  
**Consent Agenda Item #3**  
**Fact Sheet**

**Council Meeting:**

**December 3, 2019**

**Title:**

**Reappointment of three incumbents to the  
Gautier Historic Preservation Commission**

**Introduced by:**

**Contact Person/Telephone**

**April Stennett 497-8000 Ext. 315**

**Summary Explanation: Approval of a request to reappoint Michael Martin, Gwen Parker, and Gaynell Atkinson to the Historic Preservation Commission for a period of three (3) years, effective January 5, 2020 through January 5, 2023.**

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input type="checkbox"/>            |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract</b>                | <input type="checkbox"/>            |
| <b>Minutes</b>                 | <input type="checkbox"/>            |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input checked="" type="checkbox"/> |
| <b>Other</b>                   | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**

**Approval**

**Motion Made by:**

|                 |                          |               |                          |               |                          |                |                          |                |                          |                 |                          |                 |                          |
|-----------------|--------------------------|---------------|--------------------------|---------------|--------------------------|----------------|--------------------------|----------------|--------------------------|-----------------|--------------------------|-----------------|--------------------------|
| <b>Torjusen</b> | <input type="checkbox"/> | <b>Martin</b> | <input type="checkbox"/> | <b>George</b> | <input type="checkbox"/> | <b>Jackson</b> | <input type="checkbox"/> | <b>Vaughan</b> | <input type="checkbox"/> | <b>Anderson</b> | <input type="checkbox"/> | <b>Colledge</b> | <input type="checkbox"/> |
|-----------------|--------------------------|---------------|--------------------------|---------------|--------------------------|----------------|--------------------------|----------------|--------------------------|-----------------|--------------------------|-----------------|--------------------------|

**Second Made by:**

|                 |                          |               |                          |               |                          |                |                          |                |                          |                 |                          |                 |                          |
|-----------------|--------------------------|---------------|--------------------------|---------------|--------------------------|----------------|--------------------------|----------------|--------------------------|-----------------|--------------------------|-----------------|--------------------------|
| <b>Torjusen</b> | <input type="checkbox"/> | <b>Martin</b> | <input type="checkbox"/> | <b>George</b> | <input type="checkbox"/> | <b>Jackson</b> | <input type="checkbox"/> | <b>Vaughan</b> | <input type="checkbox"/> | <b>Anderson</b> | <input type="checkbox"/> | <b>Colledge</b> | <input type="checkbox"/> |
|-----------------|--------------------------|---------------|--------------------------|---------------|--------------------------|----------------|--------------------------|----------------|--------------------------|-----------------|--------------------------|-----------------|--------------------------|

| <b>Voted as follows:</b> |                 | <b>Ayes</b>              | <b>Nays</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | <b>Torjusen</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | <b>Martin</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | <b>George</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | <b>Jackson</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | <b>Vaughan</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | <b>Anderson</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | <b>Colledge</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 000-2019**

**WHEREAS**, the Historic Preservation Commission is charged with the responsibility to preserve, promote and develop the historical resources of the City in accordance with the provisions of the Mississippi Local Government Historic Preservation Law of 1978, codified as Chapter 13 of Title 39 of the Mississippi Code of 1972; and

**WHEREAS**, the Historic Preservation Commissioners serve 3 year terms after appointment; and

**WHEREAS**, Michael Martin, Gwen Parker, and Gaynell Atkinson are currently serving on the Historic Preservation Commission and whose staggered terms are expiring January 5, 2020, are willing to be re-appointed; and

**WHEREAS**, the City Council hereby finds that reappointments of Michael Martin, Gwen Parker, and Gaynell Atkinson for an additional 3 year term is in the best interest of the City;

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the reappointment of Michael Martin, Gwen Parker, and Gaynell Atkinson to the Historic Preservation Commission for a period of three (3) years, effective January 5, 2020 through January 5, 2023 is hereby approved.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary for this purpose.

Motion was made by **BLANK**, seconded by **BLANK** and the following vote was recorded:

**AYES:**

**NAYS:**

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**MAYOR**

**ATTEST:**

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**CITY CLERK**

**BLANK** by the Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting December 3, 2019.

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** April Stennett, Grants Administrator  
**Date:** 11/22/2019  
**Subject:** Gautier Historic Preservation Commission Re-appointments

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**REQUEST:**

The Grants and Projects Department requests City Council approval of the re-appointment of three incumbents who are willing to be re-appointed to the Gautier Historic Preservation Commission.

**BACKGROUND:**

"The city is authorized to establish a preservation commission to preserve, promote, and develop the city's historical resources and to advise the city on the designation of historic districts, landmarks, and landmark sites and perform such other functions as may be provided by law. All members of the commission are appointed by the city and shall serve at the will and pleasure of the city and shall serve staggered terms. The commission shall consist of 9 members residing in the City of Gautier.

All members of the commission shall serve for terms of 3 years and shall be eligible for reappointment. All commission members shall have a demonstrated knowledge of or interest, competence, or expertise in historic preservation. To the extent available in the community, the city shall appoint professional members from the primary historic preservation-related disciplines such as urban planning, American studies, American civilization, cultural geography, cultural anthropology, interior design, law, and related fields."

**DISCUSSION:**

Currently, three members of the Historic Preservation Commission whose staggered terms are expiring January 5, 2020, are willing to be re-appointed. These members include Michael Martin, Gwen Parker, and Gaynell Atkinson.

**RECOMMENDATION:**

City Council may:

- 1) Approve the three re-appointments to the Historic Preservation Commission, as presented; or
- 2) Not approve one or more of the proposed re-appointments.

**ATTACHMENTS:**

**CITY OF GAUTIER**  
**Consent Agenda Item #4**  
**Fact Sheet**

**Council Meeting:**  
**Title:**

**December 3, 2019**  
**Receive September 2019 Finance Report**

**Introduced by:**  
**Contact Person/Telephone**

**Teresa Montgomery 497-8000**

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**Summary Explanation: Receive September 2019 Finance Report.**

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input type="checkbox"/>            |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract</b>                | <input type="checkbox"/>            |
| <b>Minutes</b>                 | <input type="checkbox"/>            |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input checked="" type="checkbox"/> |
| <b>Other</b>                   | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**

**Approval**

**Motion Made by:**

|                 |                          |               |                          |               |                          |                |                          |                |                          |                 |                          |                 |                          |
|-----------------|--------------------------|---------------|--------------------------|---------------|--------------------------|----------------|--------------------------|----------------|--------------------------|-----------------|--------------------------|-----------------|--------------------------|
| <b>Torjusen</b> | <input type="checkbox"/> | <b>Martin</b> | <input type="checkbox"/> | <b>George</b> | <input type="checkbox"/> | <b>Jackson</b> | <input type="checkbox"/> | <b>Vaughan</b> | <input type="checkbox"/> | <b>Anderson</b> | <input type="checkbox"/> | <b>Colledge</b> | <input type="checkbox"/> |
|-----------------|--------------------------|---------------|--------------------------|---------------|--------------------------|----------------|--------------------------|----------------|--------------------------|-----------------|--------------------------|-----------------|--------------------------|

**Second Made by:**

|                 |                          |               |                          |               |                          |                |                          |                |                          |                 |                          |                 |                          |
|-----------------|--------------------------|---------------|--------------------------|---------------|--------------------------|----------------|--------------------------|----------------|--------------------------|-----------------|--------------------------|-----------------|--------------------------|
| <b>Torjusen</b> | <input type="checkbox"/> | <b>Martin</b> | <input type="checkbox"/> | <b>George</b> | <input type="checkbox"/> | <b>Jackson</b> | <input type="checkbox"/> | <b>Vaughan</b> | <input type="checkbox"/> | <b>Anderson</b> | <input type="checkbox"/> | <b>Colledge</b> | <input type="checkbox"/> |
|-----------------|--------------------------|---------------|--------------------------|---------------|--------------------------|----------------|--------------------------|----------------|--------------------------|-----------------|--------------------------|-----------------|--------------------------|

| <b>Voted as follows:</b> |                 | <b>Ayes</b>              | <b>Nays</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | <b>Torjusen</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | <b>Martin</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | <b>George</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | <b>Jackson</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | <b>Vaughan</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | <b>Anderson</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | <b>Colledge</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 000-2019**

**WHEREAS**, Miss. Code Ann. 21-35-13 requires a budget report to be presented to the governing authority at the regular meeting each month.

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the Finance Report for September 2019 is hereby received.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary.

Motion was made by **BLANK**, seconded by **BLANK** and the following vote was recorded:

**AYES:**

**NAYS:**

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**MAYOR**

**ATTEST:**

---

**CITY CLERK**

**BLANK** by the Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting December 3, 2019.

## SEPTEMBER 2019 Ending Cash Balances

### GENERAL DEPOSITORY

| Fund Name                                  |                    | Account #   | Balance        |
|--------------------------------------------|--------------------|-------------|----------------|
| General Fund                               | Depository Account | 001-000-001 | \$3,025,709.49 |
| MS Development Loan Katrina                | Depository Account | 007-000-001 | \$431.80       |
| CDBG-Downtown Revitalization               | Depository Account | 012-000-001 |                |
| Transportation Enhancement                 | Depository Account | 013-000-001 | (\$40,971.45)  |
| Allen Road Widening                        | Depository Account | 020-000-001 |                |
| MDOT Safe Routes to School                 | Depository Account | 029-000-001 |                |
| MDAH School House Grant                    | Depository Account | 030-000-001 | \$2,983.43     |
| MDMR City Pk Boat Launch Imp               | Depository Account | 050-000-001 |                |
| Martin Bluff Road Improvements             | Depository Account | 128-000-001 | \$102,012.64   |
| U S Justice Equitable Sharing              | Depository Account | 157-000-001 | \$396,892.02   |
| Fire Protection Fund                       | Depository Account | 160-000-001 | \$242,526.10   |
| Tidelands Grant                            | Depository Account | 171-000-001 | (\$32,082.92)  |
| Library Support Fund                       | Depository Account | 172-000-001 | \$7,484.55     |
| MSWFP Recreation Trails Grant              | Depository Account | 175-000-001 |                |
| Shepard State Park Fund                    | Depository Account | 176-000-001 | \$75,836.82    |
| USDA NRCS EWP Program                      | Depository Account | 300-000-001 | \$21,967.16    |
| Pine Cone Drive Spillway                   | Depository Account | 301-000-001 | \$43,160.53    |
| Robert Hiram Bridge Sheet Pile Wall        | Depository Account | 302-000-001 |                |
| MDOT TA Grant: Martin Bluff Sidewalk       | Depository Account | 303-000-001 | \$400,851.61   |
| Town Commons Park Project                  | Depository Account | 304-000-001 |                |
| Solid Waste Fund                           | Depository Account | 404-000-001 | \$169,694.77   |
| EPA: Brownfields Assessment                | Depository Account | 409-000-001 |                |
| General Ledger Cash Balance                |                    |             | \$4,416,496.55 |
| General Depository Reconciled Cash Balance |                    |             | \$4,415,686.09 |

### ENTERPRISE FUND

| Fund Name                          |                    | Account #   | Balance        |
|------------------------------------|--------------------|-------------|----------------|
| Elevated Water Tank                | Enterprise Account | 350-000-002 | \$625,012.00   |
| Bemis Sewer Project                | Enterprise Account | 351-000-002 |                |
| Water & Sewer Utility              | Enterprise Account | 400-000-002 | \$2,987,584.25 |
| MDB Loan: Water Ion-X Project      | Enterprise Account | 421-000-002 | \$56,287.52    |
| Water Meter Project                | Enterprise Account | 422-000-002 |                |
| Hurricane Katrina (PW Bldg)        | Enterprise Account | 449-000-002 |                |
| General Ledger Cash Balance        |                    |             | \$3,668,883.77 |
| Enterprise Reconciled Cash Balance |                    |             | \$3,664,225.59 |

### BOND & RESTRICTED FUNDS

| Fund Name                                        |                   | Account #     | Balance         |
|--------------------------------------------------|-------------------|---------------|-----------------|
| 7M GO Bond S2010                                 | Bond Fund         | 130-000-001   | \$1,307,804.34  |
| W&S Rev Bond S2018: Debt Service                 | Debt Service Fund | 250-000-007   | \$145,963.69    |
| W&S Rev Bond S2018: DS Reserve                   | Restricted Fund   | 251-000-003   | \$303,884.95    |
| W&S Rev Bond S2018: Contingency                  | Restricted Fund   | 251-000-005   | \$10,238.53     |
| W&S Rev Bond S2018: Depreciation                 | Restricted Fund   | 251-000-009   | \$10,238.53     |
| Infrastructure Imp Funds: Town Commons           | Restricted Fund   | 304-000-004   | \$487,345.31    |
| S2019 Construction Fund MPI GO Bond              | Bond Fund         | Funds 304-308 | \$3,959,519.83  |
| S2019 Cash w/ Fiscal Agent (Debt Service)        | Bond Fund         | Fund 305      | \$189,949.84    |
| W&S Rev Bond S2018: Construction                 | Bond Fund         | Funds 351-355 | \$2,733,407.68  |
| S2012 W&S Refunding Bonds: Debt Service          | Closed            | 602-000-007   | \$0.00          |
| S2012 W&S Refunding Bonds: DS Reserve            | Closed            | 495-000-001   | \$0.00          |
| MS Dev Bank SO Bond S2013: DS Reserve            | Restricted Fund   | 497-000-001   | \$273,220.35    |
| Customer Meter Deposit Funds                     | Restricted Fund   | 406-000-001   | \$753,227.44    |
| Total Bond & Restricted Reconciled Cash Balances |                   |               | \$10,174,800.49 |

**SEPTEMBER 2019  
YEAR TO DATE TOTALS**

**General Fund Totals**

|                                          | BUDGET<br>FY 2019    | SEP 2019             | Balance             | 100.0%<br>% to date |
|------------------------------------------|----------------------|----------------------|---------------------|---------------------|
| <b>General Fund Revenues</b>             | <b>10,462,974.00</b> | <b>10,877,034.76</b> | <b>(414,060.76)</b> | <b>103.9%</b>       |
| Expenditures:                            |                      |                      |                     |                     |
| 001 Legislative                          | 161,674.00           | 158,312.02           | 3,361.98            | 97.9%               |
| 010 City Court                           | 303,675.00           | 270,130.21           | 33,544.79           | 88.9%               |
| 021 City Manager                         | 263,892.00           | 241,068.81           | 22,823.19           | 91.3%               |
| 022 Human Resources                      | 113,131.00           | 83,965.34            | 29,165.66           | 74.2%               |
| 040 City Clerk                           | 263,491.00           | 232,172.35           | 31,318.65           | 88.1%               |
| 045 Finance                              | 225,702.00           | 224,237.80           | 1,464.20            | 99.3%               |
| 060 City Attorney                        | 130,000.00           | 124,140.50           | 5,859.50            | 95.4%               |
| 090 Economic Dev - Planning              | 361,199.00           | 329,082.26           | 32,116.74           | 91.1%               |
| 092 Building & General Expenses          | 592,020.00           | 511,486.81           | 80,533.19           | 86.3%               |
| 094 Grants & Project Admin               | 154,639.00           | 149,024.81           | 5,614.19            | 96.3%               |
| 100 Police                               | 3,508,582.00         | 3,245,344.98         | 263,237.02          | 92.4%               |
| 161 Fire                                 | 2,579,288.00         | 2,526,303.08         | 52,984.92           | 97.9%               |
| 170 Recreation                           | 750,300.00           | 701,184.62           | 49,115.38           | 93.4%               |
| 201 PW: Streets                          | 286,420.00           | 160,896.48           | 125,523.52          | 56.1%               |
| 205 PW: Maintenance                      | 258,328.00           | 239,615.47           | 18,712.53           | 92.7%               |
| 900 Interfund Transfers                  | 880,452.00           | 880,401.96           | 50.04               | 99.9%               |
| <b>General Fund Expenditures</b>         | <b>10,832,793.00</b> | <b>10,077,367.50</b> | <b>755,425.50</b>   | <b>93.0%</b>        |
| <i>Total Operating Expenditures</i>      | <b>9,442,525.00</b>  | <b>8,803,925.88</b>  | <b>638,599.12</b>   |                     |
| <i>Total Capital Outlay Expenditures</i> | <b>445,840.00</b>    | <b>329,064.85</b>    | <b>116,775.15</b>   |                     |
| <i>Total Debt Service</i>                | <b>63,976.00</b>     | <b>63,974.81</b>     | <b>1.19</b>         |                     |
| <i>Total Transfers Out</i>               | <b>880,452.00</b>    | <b>880,401.96</b>    | <b>50.04</b>        |                     |
| <i>Total Unappropriated</i>              | <b>0.00</b>          | <b>0.00</b>          | <b>0.00</b>         |                     |
| <i>Check Total</i>                       | <b>10,832,793.00</b> | <b>10,077,367.50</b> | <b>755,425.50</b>   |                     |
| <i>Personnel</i>                         | <b>7,332,829.00</b>  | <b>7,117,217.54</b>  | <b>215,611.46</b>   |                     |
| <i>Supplies</i>                          | <b>528,717.00</b>    | <b>395,914.57</b>    | <b>132,802.43</b>   |                     |
| <i>Other Services</i>                    | <b>1,580,979.00</b>  | <b>1,290,793.77</b>  | <b>290,185.23</b>   |                     |
| <i>Capital Outlay</i>                    | <b>445,840.00</b>    | <b>329,064.85</b>    | <b>116,775.15</b>   |                     |
| <i>Debt Service</i>                      | <b>63,976.00</b>     | <b>63,974.81</b>     | <b>1.19</b>         |                     |
| <i>Interfund Transfers for DS</i>        | <b>880,452.00</b>    | <b>880,401.96</b>    | <b>50.04</b>        |                     |
| <i>Unappropriated</i>                    | <b>0.00</b>          | <b>0.00</b>          | <b>0.00</b>         |                     |
| <i>Check Total</i>                       | <b>10,832,793.00</b> | <b>10,077,367.50</b> | <b>755,425.50</b>   |                     |



**SEPTEMBER 2019  
YEAR TO DATE TOTALS**

| <b>Special Funds</b>                           | <b>BUDGET<br/>FY 2019</b> | <b>As of<br/>SEP 2019</b> | <b>Balance</b> | <b>100.0%<br/>% to date</b> |
|------------------------------------------------|---------------------------|---------------------------|----------------|-----------------------------|
| <b>007 MS Dev 2.36M Katrina Bonds</b>          |                           |                           |                |                             |
| Revenues                                       | 280,259.00                | 280,485.35                | (226.35)       | 100.0%                      |
| Expenditures                                   | 280,309.00                | 280,293.75                | 15.25          | 99.9%                       |
| <b>013 TE-Downtown Revitalization</b>          |                           |                           |                |                             |
| Revenues                                       | 40,971.45                 | 0.00                      | 40,971.45      |                             |
| <b>020 Allen Road Widening</b>                 |                           |                           |                |                             |
| Revenues                                       | 46,324.00                 | 46,323.96                 | 0.04           | 99.9%                       |
| Expenditures                                   | 46,324.00                 | 46,323.96                 | 0.04           | 99.9%                       |
| <b>029 MDOT Safe Routes to School</b>          |                           |                           |                |                             |
| Revenues                                       | 27,155.81                 | 0.00                      | 27,155.81      |                             |
| <b>030 MDAH 2014 Community Heritage</b>        |                           |                           |                |                             |
| Revenues                                       | 3,000.00                  | 1,825.00                  | 1,175.00       | 60.8%                       |
| Expenditures                                   | 3,000.00                  | 0.00                      | 3,000.00       |                             |
| <b>128 Martin Bluff Road Project</b>           |                           |                           |                |                             |
| Expenditures                                   | 102,012.64                | 0.00                      | 102,012.64     |                             |
| <b>130 \$7M GO Bond - Capital Improvements</b> |                           |                           |                |                             |
| Revenues                                       | 5,428,367.47              | 1,605,462.50              | 3,822,904.97   | 29.5%                       |
| Expenditures                                   | 5,665,471.60              | 605,381.15                | 5,060,090.45   | 10.6%                       |
| <b>157 US Justice Equitable Sharing</b>        |                           |                           |                |                             |
| Revenues                                       | 206,210.00                | 206,209.60                | 0.40           | 99.9%                       |
| Expenditures                                   | 256,210.00                | 227,955.10                | 28,254.90      | 88.9%                       |
| <b>160 Fire Protection Fund</b>                |                           |                           |                |                             |
| Revenues                                       | 104,000.00                | 109,614.28                | (5,614.28)     | 105.3%                      |
| Expenditures                                   | 179,915.06                | 104,949.44                | 74,965.62      | 58.3%                       |
| <b>171 Combined Tidelands Grant</b>            |                           |                           |                |                             |
| Revenues                                       | 522,945.50                | 275,548.98                | 247,396.52     | 52.6%                       |
| Expenditures                                   | 512,444.00                | 301,131.90                | 211,312.10     | 58.7%                       |
| <b>172 Library Support Fund</b>                |                           |                           |                |                             |
| Revenues                                       | 110,096.00                | 115,442.31                | (5,346.31)     | 104.8%                      |
| Expenditures                                   | 110,096.00                | 110,096.00                | 0.00           | 100.0%                      |
| <b>176 Shepard State Park</b>                  |                           |                           |                |                             |
| Revenues                                       | 103,500.00                | 114,868.50                | (11,368.50)    | 110.9%                      |
| Expenditures                                   | 136,450.00                | 108,420.57                | 28,029.43      | 79.4%                       |
| <b>250 2018 W&amp;S Bond Debt Service</b>      |                           |                           |                |                             |
| Revenues                                       | 335,200.00                | 338,384.58                | (3,184.58)     | 100.9%                      |
| Expenditures                                   | 274,964.00                | 274,963.54                | 0.46           | 99.9%                       |



**SEPTEMBER 2019  
YEAR TO DATE TOTALS**

| <b>Special Funds</b>                            | <b>BUDGET<br/>FY 2019</b> | <b>As of<br/>SEP 2019</b> | <b>Balance</b> | <b>100.0%<br/>% to date</b> |
|-------------------------------------------------|---------------------------|---------------------------|----------------|-----------------------------|
| <b>251 2018 W&amp;S Bond Debt Serv Reserve</b>  |                           |                           |                |                             |
| Revenues                                        | 11,200.00                 | 17,440.64                 | (6,240.64)     | 155.7%                      |
| <b>300 USDA-NRCS EWP</b>                        |                           |                           |                |                             |
| Revenues                                        | 385,059.00                | 207,804.96                | 177,254.04     | 53.9%                       |
| Expenditures                                    | 201,514.00                | 60,168.48                 | 141,345.52     | 29.8%                       |
| <b>301 Pine Cone Drive Spillway</b>             |                           |                           |                |                             |
| Expenditures                                    | 164,525.60                | 121,365.07                | 43,160.53      | 73.7%                       |
| <b>302 Robert Hiram Bridge Sheet Pile Wall</b>  |                           |                           |                |                             |
| Revenues                                        | 14,397.07                 | 11,897.07                 | 2,500.00       | 82.6%                       |
| Expenditures                                    | 90,658.78                 | 88,158.78                 | 2,500.00       | 97.2%                       |
| <b>303 MDOT-TA Grant: Martin Bluff Sidewalk</b> |                           |                           |                |                             |
| Revenues                                        | 578,784.00                | 0.00                      | 578,784.00     |                             |
| Expenditures                                    | 1,060,348.40              | 80,712.79                 | 979,635.61     | 7.6%                        |
| <b>304 Town Commons Park Project</b>            |                           |                           |                |                             |
| Revenues                                        | 2,742,426.74              | 2,179,045.31              | 563,381.43     | 79.4%                       |
| Expenditures                                    | 2,742,426.74              | 55,127.50                 | 2,687,299.24   | 2.0%                        |
| <b>305 S2019 MPI GO Bond Construction Fund</b>  |                           |                           |                |                             |
| Revenues                                        | 4,177,283.00              | 4,440,600.99              | (263,317.99)   | 106.3%                      |
| Expenditures                                    | 4,177,283.00              | 4,148,587.82              | 28,695.18      | 99.3%                       |
| <b>306 Welcome Center PII (SSP)</b>             |                           |                           |                |                             |
| Revenues                                        | 451,200.00                | 314,500.00                | 136,700.00     | 69.7%                       |
| Expenditures                                    | 451,200.00                | 17,775.00                 | 433,425.00     | 3.9%                        |
| <b>307 Bacot Park Improvements</b>              |                           |                           |                |                             |
| Revenues                                        | 1,722,250.00              | 1,722,250.00              | 0.00           | 100.0%                      |
| Expenditures                                    | 1,722,250.00              | 35,000.00                 | 1,687,250.00   | 2.0%                        |
| <b>308 Boardwalk - Shepard State Park</b>       |                           |                           |                |                             |
| Revenues                                        | 370,000.00                | 244,950.00                | 125,050.00     | 66.2%                       |
| Expenditures                                    | 370,000.00                | 36,050.00                 | 333,950.00     | 9.7%                        |
| <b>350 Elevated Water Tank</b>                  |                           |                           |                |                             |
| Revenues                                        | 1,086,500.00              | 736,500.00                | 350,000.00     | 67.7%                       |
| Expenditures                                    | 1,044,000.00              | 68,988.00                 | 975,012.00     | 6.6%                        |
| <b>351 Bemis Sewer Project</b>                  |                           |                           |                |                             |
| Revenues                                        | 900,000.00                | 609,395.00                | 290,605.00     | 67.7%                       |
| Expenditures                                    | 900,000.00                | 411,076.93                | 488,923.07     | 45.6%                       |
| <b>352 2018 Bond General Construction/Admin</b> |                           |                           |                |                             |
| Revenues                                        | 1,591,749.00              | 76,005.92                 | 1,515,743.08   | 4.7%                        |
| Expenditures                                    | 3,028,197.00              | 3,018,197.00              | 10,000.00      | 99.6%                       |

**SEPTEMBER 2019  
YEAR TO DATE TOTALS**

| <b>Special Funds</b>                             | <b>BUDGET<br/>FY 2019</b> | <b>As of<br/>SEP 2019</b> | <b>Balance</b> | <b>100.0%<br/>% to date</b> |
|--------------------------------------------------|---------------------------|---------------------------|----------------|-----------------------------|
| <b>353 Hwy 57 Utility Line Relocation</b>        |                           |                           |                |                             |
| Revenues                                         | 2,143,479.00              | 1,110,173.80              | 1,033,305.20   | 51.7%                       |
| Expenditures                                     | 2,143,479.00              | 145,710.37                | 1,997,768.63   | 6.7%                        |
| <b>354 Robinson Still Road Utility Extension</b> |                           |                           |                |                             |
| Revenues                                         | 644,884.00                | 644,884.00                | 0.00           | 100.0%                      |
| Expenditures                                     | 644,884.00                | 78,986.00                 | 565,898.00     | 12.2%                       |
| <b>355 Water Supply &amp; Treatment Plant</b>    |                           |                           |                |                             |
| Revenues                                         | 680,000.00                | 680,000.00                | 0.00           | 100.0%                      |
| Expenditures                                     | 680,000.00                | 180,200.00                | 499,800.00     | 26.5%                       |
| <b>404 Solid Waste Fund</b>                      |                           |                           |                |                             |
| Revenues                                         | 1,567,944.00              | 1,511,017.74              | 56,926.26      | 96.3%                       |
| Expenditures                                     | 1,484,526.00              | 1,406,309.11              | 78,216.89      | 94.7%                       |
| <b>421 MSB - Water Ionization Plant</b>          |                           |                           |                |                             |
| Expenditures                                     | 56,287.52                 | 0.00                      | 56,287.52      |                             |
| <b>495 DS Reserve Fund: 2012 Bond</b>            |                           |                           |                |                             |
| Revenues                                         | 3,985.00                  | 3,825.04                  | 159.96         | 95.9%                       |
| Expenditures                                     | 494,710.00                | 494,709.18                | 0.82           | 99.9%                       |
| <b>497 DS Fund: 2013 SO Bond</b>                 |                           |                           |                |                             |
| Revenues                                         | 6,015.00                  | 5,320.17                  | 694.83         | 88.4%                       |
| Expenditures                                     | 7,015.00                  | 7,014.51                  | 0.49           | 99.9%                       |
| <b>602 DS Fund: 2012 Bond Refinance</b>          |                           |                           |                |                             |
| Revenues                                         | 583,019.00                | 582,447.23                | 571.77         | 99.9%                       |
| Expenditures (Bonds Pay/Trx)                     | 1,411,639.00              | 1,411,638.98              | 0.02           | 99.9%                       |

**SEPTEMBER 2019  
YEAR TO DATE TOTALS**

**ENTERPRISE FUND (400)**

|                                          | BUDGET<br>FY 2019       | SEP 2019                | Balance               | 100.00%<br>% to date |
|------------------------------------------|-------------------------|-------------------------|-----------------------|----------------------|
| <b>Utility Fund Revenues</b>             | <b>8,967,982.00</b>     | <b>9,133,723.32</b>     | <b>(165,741.32)</b>   | <b>101.8%</b>        |
| Administration                           | 3,218,969.00            | 2,962,862.27            | 256,106.73            | 92.0%                |
| Water & Sewer O & M                      | 3,130,016.00            | 2,746,277.30            | 383,738.70            | 87.7%                |
| Debt Service                             | 1,308,214.00            | 1,300,198.26            | 8,015.74              | 99.3%                |
| Transfers                                | 1,754,097.00            | 1,754,097.00            | 0.00                  | 100.0%               |
| Contingencies                            | 440,252.00              | 0.00                    | 440,252.00            |                      |
| <b>Utility Fund Expenditures</b>         | <b>9,851,548.00</b>     | <b>8,763,434.83</b>     | <b>1,088,113.17</b>   | <b>88.9%</b>         |
| <br><i>Total Operating Expenditures</i>  | <br><i>6,061,742.00</i> | <br><i>5,509,570.16</i> | <br><i>552,171.84</i> |                      |
| <i>Total Capital Outlay Expenditures</i> | <i>287,243.00</i>       | <i>199,569.41</i>       | <i>87,673.59</i>      |                      |
| <i>Total Debt Service</i>                | <i>1,308,214.00</i>     | <i>1,300,198.26</i>     | <i>8,015.74</i>       |                      |
| <i>Total Interfund Transfers</i>         | <i>1,754,097.00</i>     | <i>1,754,097.00</i>     | <i>0.00</i>           |                      |
| <i>Total Contingency Expenditures</i>    | <i>440,252.00</i>       | <i>0.00</i>             | <i>440,252.00</i>     |                      |
| <i>Check Total</i>                       | <i>9,851,548.00</i>     | <i>8,763,434.83</i>     | <i>1,088,113.17</i>   |                      |
| <br><i>Personnel</i>                     | <br><i>487,033.00</i>   | <br><i>462,690.16</i>   | <br><i>24,342.84</i>  |                      |
| <i>Supplies</i>                          | <i>345,000.00</i>       | <i>177,138.05</i>       | <i>167,861.95</i>     |                      |
| <i>Other Services</i>                    | <i>5,229,709.00</i>     | <i>4,869,741.95</i>     | <i>359,967.05</i>     |                      |
| <i>Capital Outlay</i>                    | <i>287,243.00</i>       | <i>199,569.41</i>       | <i>87,673.59</i>      |                      |
| <i>Debt Service</i>                      | <i>1,308,214.00</i>     | <i>1,300,198.26</i>     | <i>8,015.74</i>       |                      |
| <i>Interfund Transfers</i>               | <i>1,754,097.00</i>     | <i>1,754,097.00</i>     | <i>0.00</i>           |                      |
| <i>Contingencies</i>                     | <i>440,252.00</i>       | <i>0.00</i>             | <i>440,252.00</i>     |                      |
| <i>Check Total</i>                       | <i>9,851,548.00</i>     | <i>8,763,434.83</i>     | <i>1,088,113.17</i>   |                      |

**CITY OF GAUTIER  
Consent Agenda Item #5  
Fact Sheet**

**Council Meeting:**  
**Title:**

**December 3, 2019**  
**Authorization to remove vehicles from Planning  
Department inventory and disposing of certain  
equipment properly**

**Introduced by:**  
**Contact Person/Telephone**

**Scott Ankerson 497-8000 ext. 312**

---

**Summary Explanation: Authorization to remove vehicles from Planning Department  
inventory and disposing of certain equipment properly**

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input checked="" type="checkbox"/> |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract/Agreement</b>      | <input type="checkbox"/>            |
| <b>Minutes</b>                 | <input type="checkbox"/>            |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input type="checkbox"/>            |
| <b>Other</b>                   | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**

**Approval**

**Motion Made by:**

|          |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
|----------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|
| Torjusen | <input type="checkbox"/> | Martin | <input type="checkbox"/> | George | <input type="checkbox"/> | Jackson | <input type="checkbox"/> | Vaughan | <input type="checkbox"/> | Anderson | <input type="checkbox"/> | Colledge | <input type="checkbox"/> |
|----------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|

**Second Made by:**

|          |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
|----------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|
| Torjusen | <input type="checkbox"/> | Martin | <input type="checkbox"/> | George | <input type="checkbox"/> | Jackson | <input type="checkbox"/> | Vaughan | <input type="checkbox"/> | Anderson | <input type="checkbox"/> | Colledge | <input type="checkbox"/> |
|----------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|

| <b>Voted as follows:</b> |                 | <b>Ayes</b>              | <b>Nays</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | <b>Torjusen</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | <b>Martin</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | <b>George</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | <b>Jackson</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | <b>Vaughan</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | <b>Anderson</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | <b>Colledge</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi the following:

**RESOLUTION NUMBER 000-2019**

**RESOLUTION OF THE CITY OF GAUTIER, MISSISSIPPI REMOVING CERTAIN VEHICLES FROM THE INVENTORY OF PLANNING DEPARTMENT, DECLARING SUCH EQUIPMENT SURPLUS, AND DISPOSING OF CERTAIN EQUIPMENT PROPERLY**

**WHEREAS**, the Gautier Planning Department is requesting the following vehicles to be removed from inventory and declared surplus:

**VIN NUMBERS:**

#2FAFP71W3YX161382  
#2FAFP71W7XX168222  
#2FAFP71W97X112802  
#2FAFP71W8YX148384  
#2FAFP71W4WX118912

**WHEREAS**, the following vehicles have been previously declared as surplus and have been removed from inventory:

**VIN NUMBERS:**

|                    |                    |                    |
|--------------------|--------------------|--------------------|
| #2FAFP71W1XX145938 | #2FABP7BV4BX124398 | #2FABP7BV2BX124397 |
| #2FAFP71W85X145366 | #2FAFP71W57X112800 | #2FAFP71W63X164978 |
| #2FAFP71W8WX118914 | #2FAF971W25X145363 | #2FAFP71W0XX134977 |
| #2FAFP71W27X115802 | #2FAFP71W65X145365 | #1FAFP71W27X112804 |
| #2FAFP71W37X115811 | #2FAFP71W17X115807 | #1FTSW21586EC45606 |
|                    | #1GKEC13T21J183877 |                    |

**WHEREAS**, the Mayor and Members of the Council have determined that given the age and condition of all above vehicles, these items have no monetary value, and therefore removal from inventory and proper disposal is in the best interest of the City of Gautier.

**BE IT, THEREFORE, RESOLVED** that the Mayor and Council of the City of Gautier, Mississippi has determined that the vehicles described above are hereby removed from inventory and declared as surplus.

**BE IT, FURTHER, RESOLVED** that all above vehicles, having no monetary value, may be disposed of in any legal method in the discretion of the City Manager.

**BE IT, FURTHER, RESOLVED** that the Council authorizes the City Manager or City Clerk to execute all documents necessary for this purpose.

The motion to approve the foregoing resolution was made by **BLANK**, seconded by **BLANK**, and the following vote was recorded:

**AYES:**

**NAYS:**

**WHEREUPON**, the Mayor and Members of the Council of the City of Gautier, Mississippi, declared the motion carried and the Resolution adopted this the 3<sup>rd</sup>, December, 2019.

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**MAYOR**

**ATTEST:**

---

**CITY CLERK**

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** Scott Ankerson, Planning Director  
**Date:** November 25, 2019  
**Subject:** Authorization to remove vehicles from inventory, declare surplus and scrap

---

**REQUEST:**

The Planning Department requests City Council remove vehicles with the following VIN numbers from inventory, declare them surplus and approve for them to be taken for scrap.

#2FAFP71W3YX161382 #2FAFP71W97X112802 #2FAFP71W4WX118912  
#2FAFP71W7XX168222 #2FAFP71W8YX148384

The Planning Department also requests City Council approve vehicles with the following VIN numbers to be taken for scrap (these vehicles have previously been declared surplus).

#2FAFP71W1XX145938 #2FABP7BV4BX124398 #2FABP7BV2BX124397  
#2FAFP71W85X145366 #2FAFP71W57X112800 #2FAFP71W63X164978  
#2FAFP71W8WX118914 #2FAFP71W25X145363 #2FAFP71W0XX134977  
#2FAFP71W27X115802 #2FAFP71W65X145365 #1FAFP71W27X112804  
#2FAFP71W37X115811 #2FAFP71W17X115807 #1FTSW21586EC45606  
#1GKEC13T21J183877

**BACKGROUND:**

The Planning Department has determined that, given the age and condition of the vehicles, removal from inventory and being taken for scrap is in the best interest of the City of Gautier.

**DISCUSSION:**

The majority of the vehicles have already been declared surplus. The other vehicles are not operational.

**RECOMMENDATIONS:**

The Planning Department Staff recommends that City Council authorize the removal of those vehicles listed above from inventory, declare them surplus and approve for them to be taken for scrap.

The Planning Department Staff recommends that City Council authorize the vehicles listed above that have previously been declared surplus be approved to be taken for scrap.

**ATTACHMENTS:**

None



**CITY OF GAUTIER**  
**Consent Agenda Item #6**  
**Fact Sheet**

**Council Meeting:**  
**Title:**

**December 3, 2019**  
**Approval of the in-kind service request for the 2019**  
**Gautier Rotary Club Christmas Parade**

**Introduced by:**

**Contact Person/Telephone**

**Chassity Bilbo 497-8000**

**Summary Explanation: Approval of the in-kind services request for the 2019 Gautier Rotary Club Christmas Parade**

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input type="checkbox"/>            |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract/Agreement</b>      | <input type="checkbox"/>            |
| <b>Minutes</b>                 | <input checked="" type="checkbox"/> |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input checked="" type="checkbox"/> |
| <b>Other</b>                   | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**  
**Approval**

|                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Motion Made by:</b>   |                          |                          |                          |                          |                          |                          |                          |                          |                          |
| <b>Torjusen</b>          | <input type="checkbox"/> | <b>Martin</b>            | <input type="checkbox"/> | <b>George</b>            | <input type="checkbox"/> | <b>Jackson</b>           | <input type="checkbox"/> | <b>Vaughan</b>           | <input type="checkbox"/> |
| <input type="checkbox"/> |                          | <input type="checkbox"/> |                          | <input type="checkbox"/> |                          | <input type="checkbox"/> |                          | <input type="checkbox"/> |                          |

|                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Second Made by:</b>   |                          |                          |                          |                          |                          |                          |                          |                          |                          |
| <b>Torjusen</b>          | <input type="checkbox"/> | <b>Martin</b>            | <input type="checkbox"/> | <b>George</b>            | <input type="checkbox"/> | <b>Jackson</b>           | <input type="checkbox"/> | <b>Vaughan</b>           | <input type="checkbox"/> |
| <input type="checkbox"/> |                          | <input type="checkbox"/> |                          | <input type="checkbox"/> |                          | <input type="checkbox"/> |                          | <input type="checkbox"/> |                          |

| <b>Voted as follows:</b> |                 | <b>Ayes</b>              | <b>Nays</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | <b>Torjusen</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | <b>Martin</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | <b>George</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | <b>Jackson</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | <b>Vaughan</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | <b>Anderson</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | <b>Colledge</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

**RESOLUTION APPROVING SPONSORSHIP OF GAUTIER ROTARY CLUB  
CHRISTMAS PARADE TO BE HELD ON DECEMBER 7, 2019**

**RESOLUTION NUMBER 000-2019**

**WHEREAS**, the Gautier Rotary Club has requested that the City sponsor its annual Christmas Parade to be held on December 7, 2019; and

**WHEREAS**, the sponsorship includes assistance cleaning up following the event, and placement of City bleachers and barricades as indicated in the request; and

**WHEREAS**, in exchange for this sponsorship, the City receives advertisement of its resources, and the Gautier Police and Fire Departments are permitted to participate in the parade; and

**WHEREAS**, the Mayor and Members of the Council of the City of Gautier find that this sponsorship brings into favorable notice the opportunities, possibilities and resources of the City of Gautier; and

**WHEREAS**, the Mayor and Members of the Council have determined that sponsorship of this event is helpful toward advancing the moral, financial and other interests of the City of Gautier; and

**BE IT THEREFORE RESOLVED THAT**, the sponsorship of the Gautier Rotary Club Christmas Parade is hereby authorized.

**BE IT FURTHER RESOLVED THAT**, the City Manager and City Clerk are authorized to execute any and all documents necessary for this purpose.

Motion was made by **BLANK**, seconded by **BLANK** and the following vote was recorded:

**AYES:**

**NAYS:**

---

**MAYOR**

**ATTEST:**

---

**CITY CLERK**

**BLANK** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of December 3, 2019.

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** Chassity Bilbo, Recreation Director  
**Date:** November 25, 2019  
**Subject:** Approval of in-kind services for the Annual Gautier Rotary Christmas Parade

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**REQUEST:**

The Recreation Department requests City Council approval of in-kind services for the Gautier Rotary Club's 22nd Annual Christmas Parade as more fully described in the attached application for special permit submitted on November 25, 2019.

**BACKGROUND:**

The Gautier Rotary Club's 22nd Annual Christmas Parade will be held on Saturday, December 7<sup>th</sup> at 1:00 p.m. The City has historically provided logistical services, traffic control and security for this event.

**DISCUSSION:**

The Gautier Rotary Club has requested that the City sponsor the event by providing in-kind services, including but not limited to the following:

- |                                                              |                                                  |
|--------------------------------------------------------------|--------------------------------------------------|
| 1. Advertisement of the event on the City's electronic signs | 5. Two sets of bleachers                         |
| 2. Provision of traffic control for the parade               | 6. Barricade set up and take down                |
| 3. Police participation in parade as in past years           | 7. Street and street apron clean-up after parade |
| 4. Firefighters and Fire Truck participation in parade       | 8. Port-O-Lets                                   |

**RECOMMENDATION:**

The Recreation Department recommends that City Council authorize the in-kind service request from the Gautier Rotary Club for the 22nd Annual Christmas Parade as the City has determined that this event is an economic tool that brings into favorable notices the opportunities, possibilities, and resources of the City of Gautier.

City Council may:

- 1) Approve the in-kind service request from the Gautier Rotary Club for the 22nd Annual Christmas Parade, or
- 2) Not approve the in-kind service request from the Gautier Rotary Club for the 22nd Annual Christmas Parade.

**ATTACHMENT(S):**

Special Event Application/In-kind Request

**This year's Christmas Parade is Saturday, December 7, 2019 and will roll at 1:00 p.m. Line-up will be north of Lowe's at the intersection of William Payne Adams Boulevard and Dolphin Drive starting at 12:00 p.m.**

Summary of in kind services requested:

The Gautier Rotary Club would like to request in kind services from the City of Gautier for the 2019 Christmas Parade to include: police support for safety & traffic control, clean up the streets and grass along the parade route after the parade. By 8:00 a.m. the morning of the parade: bleachers in front of the Singing River Mall property and barricades in front of the judging area.

Details:

**Chief Elbin:**

- \* Do you know how many police cars will be riding in the parade? I need to get them in the line-up. Also, will you be riding this year?
- \* Will there be support from Pascagoula or the Sheriff's department? Sometimes the Sheriff's Department comes on 4-wheelers or horses.
- \* We also need traffic and safety support.
- \* Do you think the police union would like to participate in the parade?

**Chief Jones:**

- \* As in year's past, you all let Santa Claus ride on the fire truck. Will you be able to let Santa ride on the fire truck this year?
- \* Do you think the fire fighter union would like to participate in the parade?

**City of Gautier**

- \* The city usually requests a spot for the City Council members float. Several years ago, the city employees had a float too. Will the city have one or two entries this year?
- \* By 8:00 a.m. the morning of the parade: We need three bleachers in front of the dentists' office in the southwest corner of the mall parking lot along highway 90. We need three barricades to block off the judge's stand in that same area.
- \* Also, we will need clean up after the parade as usual.
- \* Does the city currently have any Port-O-Lets? Normally, you all put two port-o-lets in the parade set-up area. That would now be on William Payne Adams Boulevard. Although with the mall closed, we may need a port-o-let near the parade route as well. Please let us know.

Thanks for your support!

We're going to have a great community event Saturday, December 7, 2019!

Casey Vaughan, Chairman  
228-297-3063

Rotary Club of Gautier, MS  
P.O. Box 241  
Gautier, MS 39553  
Fax: 228-769-2483

**CITY OF GAUTIER  
Consent Agenda Item #7  
Fact Sheet**

**Council Meeting:**  
**Title:**

**December 3, 2019**  
**Approval of minutes from Recessed Council Meeting**  
**held November 19, 2019.**

**Introduced by:**

**Contact Person/Telephone**

**Cynthia Russell 497-8000 Ext. 302**

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**Summary Explanation: Approval of minutes from Recessed Council Meeting held November 19, 2019.**

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input type="checkbox"/>            |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract/Agreement</b>      | <input type="checkbox"/>            |
| <b>Minutes</b>                 | <input checked="" type="checkbox"/> |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input checked="" type="checkbox"/> |
| <b>Other</b>                   | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**

**Approval**

|                        |                          |               |                          |               |                          |                |                          |                 |                          |
|------------------------|--------------------------|---------------|--------------------------|---------------|--------------------------|----------------|--------------------------|-----------------|--------------------------|
| <b>Motion Made by:</b> |                          |               |                          |               |                          |                |                          |                 |                          |
| <b>Torjusen</b>        | <input type="checkbox"/> | <b>Martin</b> | <input type="checkbox"/> | <b>George</b> | <input type="checkbox"/> | <b>Jackson</b> | <input type="checkbox"/> | <b>Vaughan</b>  | <input type="checkbox"/> |
|                        |                          |               |                          |               |                          |                |                          | <b>Anderson</b> | <input type="checkbox"/> |
|                        |                          |               |                          |               |                          |                |                          |                 | <b>Colledge</b>          |
|                        |                          |               |                          |               |                          |                |                          |                 | <input type="checkbox"/> |

|                        |                          |               |                          |               |                          |                |                          |                 |                          |
|------------------------|--------------------------|---------------|--------------------------|---------------|--------------------------|----------------|--------------------------|-----------------|--------------------------|
| <b>Second Made by:</b> |                          |               |                          |               |                          |                |                          |                 |                          |
| <b>Torjusen</b>        | <input type="checkbox"/> | <b>Martin</b> | <input type="checkbox"/> | <b>George</b> | <input type="checkbox"/> | <b>Jackson</b> | <input type="checkbox"/> | <b>Vaughan</b>  | <input type="checkbox"/> |
|                        |                          |               |                          |               |                          |                |                          | <b>Anderson</b> | <input type="checkbox"/> |
|                        |                          |               |                          |               |                          |                |                          |                 | <b>Colledge</b>          |
|                        |                          |               |                          |               |                          |                |                          |                 | <input type="checkbox"/> |

| <b>Voted as follows:</b> |                 | <b>Ayes</b>              | <b>Nays</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | <b>Torjusen</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | <b>Martin</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | <b>George</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | <b>Jackson</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | <b>Vaughan</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | <b>Anderson</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | <b>Colledge</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 000-2019**

**WHEREAS**, Miss. Code Ann. 21-15-33 requires that the minutes be adopted and approved by a majority of the members of the governing body at the next regular meeting or within thirty (30) days of the meeting they represent, whichever occurs first. Upon such approval, the minutes are valid from and after the date of the meeting; and

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the minutes from Recessed Council Meeting held November 19, 2019 are hereby approved.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary for this purpose.

Motion was made by **BLANK** seconded by **BLANK** and the following vote was recorded:

**AYES:**

**NAYS:**

---

**MAYOR**

**ATTEST:**

---

**CITY CLERK**

**BLANK** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of December 3, 2019.

**Tuesday  
November 19, 2019  
Gautier, Mississippi**

**BE IT REMEMBERED THAT A RECESSED MEETING of the Mayor and Members of the Council of the City of Gautier, Mississippi was held November 19, 2019 at 6:30 PM in the City Hall Municipal Building, 3330 Highway 90, Gautier, Mississippi.**

**Those present were Mayor Phil Torjusen, Council Members Mary Martin, Richard Jackson, Casey Vaughan, Rusty Anderson and Adam Colledge. Also present were Paula Yancey, City Manager; Josh Danos, City Attorney and other concerned citizens. Absent were Councilman Cameron George and Cindy Russell, City Clerk.**

---

**AGENDA  
CITY OF GAUTIER, MISSISSIPPI  
CITY HALL COUNCIL CHAMBERS  
November 19, 2019 @ 6:30PM**

- I. Call to Order**
  - 1. Prayer**
  - 2. Pledge of Allegiance**
- II. Agenda Order Approval**
- III. Announcements**
  - 1. Petro Chevrolet and the City of Gautier presents “Rockin’ the Roundabout” in Gautier on November 22, 2019 from 6:00 p.m. to 8:30 p.m.**
  - 2. Offices closed Thursday, November 28<sup>th</sup> and Friday, November 29<sup>th</sup> in observance of Thanksgiving Day.**
  - 3. Lights and Lagniappe on the Bayou – Saturday, December 7<sup>th</sup> at 3:00PM at Gautier City Hall**
- IV. Presentation Agenda**
  - I. Business Agenda**

**1. Authorization to acknowledge Bids and Award Contract for the Robinson Still Road and Sewer Project**

|  |                       |  |                                                        |  |                                           |  |      |
|--|-----------------------|--|--------------------------------------------------------|--|-------------------------------------------|--|------|
|  | STAFF<br>PRESENTATION |  | PUBLIC<br>QUESTIONS/COMMENTS<br>(3 MINUTES PER PERSON) |  | MOTION<br>COUNCIL<br>DISCUSSION/QUESTIONS |  | VOTE |
|--|-----------------------|--|--------------------------------------------------------|--|-------------------------------------------|--|------|

**2. Authorization to Acknowledge Bids and Award Contract for Shepard State Park Marshwalk Pier**

|  |                       |  |                                                        |  |                                           |  |      |
|--|-----------------------|--|--------------------------------------------------------|--|-------------------------------------------|--|------|
|  | STAFF<br>PRESENTATION |  | PUBLIC<br>QUESTIONS/COMMENTS<br>(3 MINUTES PER PERSON) |  | MOTION<br>COUNCIL<br>DISCUSSION/QUESTIONS |  | VOTE |
|--|-----------------------|--|--------------------------------------------------------|--|-------------------------------------------|--|------|

**3. Consideration of a Special Exception Permit that would allow a Mobile Home in a C-3, Highway Commercial Zoning District (GPC 19-19-SE)**

|  |                       |  |                                                        |  |                                           |  |      |
|--|-----------------------|--|--------------------------------------------------------|--|-------------------------------------------|--|------|
|  | STAFF<br>PRESENTATION |  | PUBLIC<br>QUESTIONS/COMMENTS<br>(3 MINUTES PER PERSON) |  | MOTION<br>COUNCIL<br>DISCUSSION/QUESTIONS |  | VOTE |
|--|-----------------------|--|--------------------------------------------------------|--|-------------------------------------------|--|------|

**4. Approval of a Supplemental Agreement No. 1 to Right of Way Technology, Inc. Contract for the Martin Bluff Road Widening Project: STP-9194-00(001)LPA/105069-801000**

|  |                       |  |                                                        |  |                                           |  |      |
|--|-----------------------|--|--------------------------------------------------------|--|-------------------------------------------|--|------|
|  | STAFF<br>PRESENTATION |  | PUBLIC<br>QUESTIONS/COMMENTS<br>(3 MINUTES PER PERSON) |  | MOTION<br>COUNCIL<br>DISCUSSION/QUESTIONS |  | VOTE |
|--|-----------------------|--|--------------------------------------------------------|--|-------------------------------------------|--|------|

**5. Approval of Docket of Claims**

|  |                       |  |                                                        |  |                                           |  |      |
|--|-----------------------|--|--------------------------------------------------------|--|-------------------------------------------|--|------|
|  | STAFF<br>PRESENTATION |  | PUBLIC<br>QUESTIONS/COMMENTS<br>(3 MINUTES PER PERSON) |  | MOTION<br>COUNCIL<br>DISCUSSION/QUESTIONS |  | VOTE |
|--|-----------------------|--|--------------------------------------------------------|--|-------------------------------------------|--|------|

**II. Consent Agenda (All items approved in one motion)**

- 1. Receive October 2019 Privilege License Report**
- 2. Authorization to enter into a Lease Purchase Agreement with Motorola Solutions and approval of a \$50,000 down payment from the “Wireless Communication Funds”**
- 3. Approval to accept a monetary donation for the City of Gautier’s Lights and Lagniappe on the Bayou**
- 4. Approval for road closure and traffic control for the 2019 Lights and Lagniappe on the Bayou Firework Show**
- 5. Approval to waive the deposit in the amount of (\$100.00) and rental fee in the amount of (\$150.00) for the use of the Gautier Senior Center for Gautier Elementary students Fall Fundraiser limo ride pizza party**
- 6. Approve proposal by Colony Insurance Company for property coverage on the water ionization plant and the eight (8) municipal wells through HUB International**
- 7. Approval of minutes from Regular Council Meeting held November 5, 2019**



### **III. STUDY AGENDA**

- 1. Discuss Citizen Comments**
- 2. Discuss Council Comments**
- 3. Discuss City Manager Comments**
- 4. Discuss City Clerk Comments**
- 5. Discuss City Attorney Comments**

**Adjourn until December 3, 2019 at 6:30 PM**  
[www.gautier-ms.gov](http://www.gautier-ms.gov)

---

Meeting was called to Order by Mayor Torjusen at 6:30 pm

---

Councilman Colledge made the motion to approve the agenda order with the following revisions:

1. Add Request Letter to Consent Agenda Item 5 – Authorization to waive the deposit (\$100) and rental fee (\$150) at Gautier Senior Center for Elementary Students
2. Correct Consent Agenda Item 7- Approval of minutes from Regular Council Meeting held November 5, 2019: 1) Page 30 should be page 13, and 2) Councilman George seconded Motion to Approve the Consent Agenda.

Councilman Vaughan seconded the motion. The vote was carried unanimously.

---

### **ANNOUNCEMENTS**

1. Petro Chevrolet and the City of Gautier presents “Rockin’ the Roundabout” in Gautier on November 22, 2019 from 6:00 p.m. to 8:30 p.m.
  2. Offices closed Thursday, November 28<sup>th</sup> and Friday, November 29<sup>th</sup> in observance of Thanksgiving Day.
  3. Lights and Lagniappe on the Bayou – Saturday, December 7<sup>th</sup> at 3:00PM at Gautier City Hall
-

**PRESENTATION**

None

---

*Petro*



& THE CITY OF GAUTIER  
present

**ROCKIN' the  
ROUNDABOUT**  
in GAUTIER

**LIVE MUSIC**  
**4th Friday**  
**of the**  
**month**  
6-8:30 p.m.



AUGUST 23

SEPTEMBER 27

OCTOBER 25

NOVEMBER 22



STATE OF MISSISSIPPI

*Office of the Governor*



**PROCLAMATION**

**WHEREAS**, pursuant to Miss. Code Ann. Section 3-3-7, Thanksgiving Day, Christmas Day and New Year's Day are declared legal holidays in the State of Mississippi; and

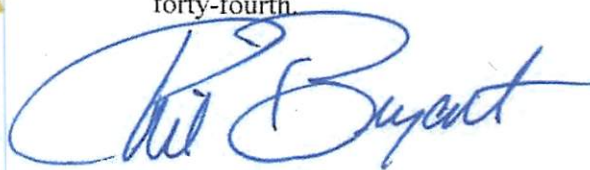
**WHEREAS**, during the Thanksgiving holiday and Christmas and New Year's season, many state employees will spend time with their families in Mississippi and in other states;

**NOW, THEREFORE**, I, Phil Bryant, Governor of the State of Mississippi, pursuant to the authority vested in me under the Constitution of the State of Mississippi and applicable statutes of the State of Mississippi, do hereby authorize the closing of all offices of the State of Mississippi on Thursday, November 28, 2019, in observance of THANKSGIVING DAY; on Wednesday, December 25, 2019, in observance of CHRISTMAS DAY; and on Wednesday, January 1, 2020, in observance of NEW YEAR'S DAY.

**IN ADDITION**, I hereby authorize the executive officers of all state agencies, in their discretion after considering the interests of the people of the State of Mississippi and the staffing needs of their respective agencies, to close all offices of the State of Mississippi on Friday, November 29, 2019, in further observance of the Thanksgiving holiday and on Tuesday, December 24, 2019, in further observance of Christmas; and to staff their respective agencies as needed during the Thanksgiving holiday and Christmas season.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Great Seal of the State of Mississippi to be affixed.

**DONE** in the City of Jackson, on the 8<sup>th</sup> day of October in the year of our Lord, two thousand and nineteen, and of the Independence of the United States of America, the two hundred and forty-fourth.

A handwritten signature in blue ink, reading "Phil Bryant".

**PHIL BRYANT  
GOVERNOR**

**BY THE GOVERNOR**





**Join  
the City of Gautier for  
Lights & Lagniappe  
on the Bayou  
Saturday, December 7th  
3:00 p.m.  
Gautier City Hall**

Tree Lighting. Pictures with Santa. Fun.  
Fireworks. Pet Parade.  
Winter Wonderland Snow Party  
Christmas Festivities





Councilwoman Martin made the motion to reject Jay Bearden Construction, Inc. and to award the contract to Hudson Contracting as the lowest and best bid, as presented. Councilman Colledge seconded the motion. The vote was carried unanimously.

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 248-2019**

**WHEREAS**, on September 27, 2019, the project engineer, Seymour Engineering, received sealed bids for the Robinson Still Road Water and Sewer Project (hereinafter, "the Project"); and

**WHEREAS**, Seymour Engineering, has tabulated the bid results which are incorporated by reference herein; and

**WHEREAS**, the lowest bid was received from Jay Bearden Construction Company in the amount of \$195,425.63; and

**WHEREAS**, the second-lowest bid was received from Hudson Contracting, Inc. in the amount of \$216,910.00; and

**WHEREAS**, pursuant to the bid documents, the City reserves the right to investigate the qualifications of the bidders, and to determine the ability of the bidders to perform the Project work; and

**WHEREAS**, Seymour Engineering, on behalf of the City, conducted such an investigation and has provided the results in the attached memorandum, dated November 12, 2019; and

**WHEREAS**, based on the information provided in the above memorandum, the investigation of Jay Bearden Construction Company fails to satisfy the City that said bidder is properly qualified to and capable of carrying out the obligations of the Contract and completing the work contemplated therein; and

**WHEREAS**, Seymour Engineering recommends awarding this contract to Hudson Contracting, Inc., as the lowest and best bidder; and

**WHEREAS**, the Mayor and Council Members hereby find that Hudson Contracting, Inc. has submitted the lowest and best bid; and

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that all submitted bids included in the bid tabulation are acknowledged.

**IT IS FURTHER ORDERED**, for the above reasons, and for those reasons included in the Seymour Engineering memorandum, that the bid submitted by Jay Bearden Construction Company is rejected.

**IT IS FURTHER ORDERED**, by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the award and execution of a contract with Hudson Contracting, Inc. for the Robinson Still Road Water and Sewer Project, as lowest and best bidder, is hereby authorized and approved.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary for this purpose.

Motion was made by **Councilwoman Martin**, seconded by **Councilman Colledge**, and the following vote was recorded:

**AYES:**        **Phil Torjusen**  
                  **Mary Martin**  
                  **Richard Jackson**  
                  **Casey Vaughan**  
                  **Rusty Anderson**  
                  **Adam Colledge**

**NAYS:**        **None**

**ABSENT:**    **Cameron George**

---

**MAYOR**

**ATTEST:**

---

**CITY CLERK**

**PASSED AND ADOPTED** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of November 19, 2019.

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** April Stennett, Grants Administrator  
**Date:** 11/12/2019  
**Subject:** Authorization to Acknowledge Bids and Award Contract for the Robinson Still Road Water and Sewer Project

---

**REQUEST:**

The Grants and Projects Department requests that City Council acknowledge receipt of eight bids for the Robinson Still Road Water and Sewer Project, reject the bid of Jay Bearden Construction Co., and award a contract to Hudson Contracting, Inc. as the lowest and best bid.

**BACKGROUND:**

The City of Gautier annexed the Robinson Still Road area in 2002. This project will expand water and sewer services to the area. The project will be funded through the revenue bond.

**DISCUSSION:**

Eight bids for this project were received and opened on Sept. 27, 2019. The bidders were DNA Underground, Inc., F & F Construction, Inc., Gulf Coast Underground, Hudson Contracting, Inc., Jay Bearden Construction Co., Moran Hauling, Inc., SCI, Inc., and Twin L Construction, Inc. The low bidder was Jay Bearden Construction Co., with a bid of \$195,425.63. The second-lowest bid was received from Hudson Contracting, Inc. in the amount of \$216,910.

Pursuant to the bid documents, the City reserves the right to investigate the qualifications of the bidders and to determine the ability of the bidders to perform the work. Seymour Engineering, on behalf of the City, conducted an investigation and has provided the results in the attached memorandum. Based on the information provided, the investigation of Jay Bearden Construction Company fails to satisfy the City that the bidder is properly qualified to and capable of carrying out the obligations of the contract and completing the work.

Seymour Engineering recommends awarding this contract to Hudson Contracting, Inc., as the lowest and best bidder.

**RECOMMENDATION:**

The Grants and Projects Department recommends that City Council acknowledge receipt of eight bids for the Robinson Still Road Water and Sewer Project, reject the bid of Jay Bearden Construction Co., and award a contract to Hudson Contracting, Inc. as the lowest and best bid.

The City Council may:

- 1) Acknowledge the bids, reject the bid of Jay Bearden Construction Co., and award a contract to Hudson Contracting, Inc. as the lowest and best bid, as presented; or
- 2) Not acknowledge the bids and not award a contract to the lowest and best bidder as presented.

**ATTACHMENTS:**

1. Business Agenda Item 1 - Authorization to award and execute a contract with Robinson Still Road
2. Supplementary Conditions
3. General Conditions



4. Engineer's Memo and Bid Tabulation
5. Proposed Contract

SUPPLEMENTARY CONDITIONS  
OF THE  
CONSTRUCTION CONTRACT

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## **SUPPLEMENTARY CONDITIONS**

### **Prepared for the City of Gautier**

#### **GENERAL**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. C-700, 2007 Edition) and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the same meanings stated below, which are applicable to both the singular and plural thereof.

The Contractor's attention is directed to Division 1, GENERAL REQUIREMENTS, which contains other directions pertinent to the project.

#### **SPECIFIC COMMENTS**

##### **ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**

**SC-1.01.A.19. *Engineer*** -- ADD the following language at the end of the last sentence in Paragraph 1.01.A.19:

Wherever in these Contract Documents the word "Engineer" or "E/A" or "A/E" appears, it shall be understood to mean the Engineer, Seymour Engineering, PLLC, and their authorized representatives, acting either directly or indirectly as authorized agents of the Owner.

**SC-1.01.A.29. *Owner*** -- ADD the following language at the end of the last sentence in Paragraph 1.01.A.29:

Whenever in these Contract Documents the word "Owner" appears, it shall be understood to mean the City of Gautier acting by and through their official minutes, and their authorized representatives.

**SC-1.01.A.44. *Substantial Completion*** – AMEND the language in the first sentence of Paragraph 1.01.A.44 to read as follows:

CHANGE the language from “in the opinion of Engineer,” to “in the opinion of the Engineer and Owner,”

##### **ARTICLE 2 – PRELIMINARY MATTERS**

**SC-2.01.B *Evidence of Insurance*** DELETE Paragraphs and 2.01.B in its entirety and INSERT the following in its place:

B. Before any Work at the Site is started, Contractor shall deliver to Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) .which Contractor is required to purchase and maintain in accordance with Article 5.

**SC-2.02 *Copies of Documents*** AMEND the language in the first sentence in Paragraph 2.02.A to read as follows:

CHANGE the language from “up to ten” to “up to three unless otherwise noted in Article 4”.

**SC-2.03 *Commencement of Contract Times; Notice to Proceed*** DELETE the last sentence in its entirety.

**SC-2.06.B *Preconstruction Conference; Designation of Authorized Representative*** AMEND the language in the second sentence in Paragraph 2.06.B to read as follows:

“Contractor’s representative shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of Contractor. Owner’s representative is authorized to act as a liaison with respect to the Project.”

**SC-2.07 Initial Acceptance of Schedules** ADD the following new language at the end of Paragraph 2.07.A.2:

The requirements for specification Section 01300 - Submittals During Construction shall also be met prior to accepting the Schedule of Submittals.

**SC-2.08 Narrative Report Outline** ADD the following new paragraph immediately following Paragraph 2.07:

SC-2.08 A narrative report as outlined in Specification section 01311 shall be required and shall accompany all Payment Applications prior to approval.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

**SC-3.03.A Reporting Discrepancies** Add this sentence to the end of Paragraph 3.03A.1:

1. Even though Contractor is required to notify Engineer as to possible quantity differences, there shall be no price adjustment given to the Contractor as a result of any variation between the estimated quantities and the actual quantities necessary to complete the required work.

**SC-3.03.B Resolving Discrepancies** ADD the following new language at the end of this section:

- c. Whenever the Contract Documents contain contradictions or discrepancies within the document, the most costly means or method shall be applied.

### **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

**SC-4.01.A Availability of Lands** DELETE the last sentence.

**SC-4.01.B Availability of Lands** DELETE this paragraph in its entirety.

**SC-4.02 Subsurface and Physical Conditions** DELETE Paragraph 4.02.A and Paragraph 4.02.B in their entirety and REPLACE 4.02A.1 and 4.02B.1 with the following:

- A.1. Subsurface data known to Owner at the time of considering said project may have changed as a result of weather conditions, regular marine traffic, incidental work within the area, expansion of marsh grasses and submerged aquatic vegetations, etc. Any such change or a combination of change could present different conditions thus have an impact on the quantity of dredge material necessary to complete the required work and comply with all permit requirements.
- B.1. Technical data is advisory only and Contractor is solely responsible for the accuracy of any data used for their field assessment and evaluation of site conditions of required work to be completed.

**SC-4.02.C Site Surveys** ADD the following new paragraph immediately after Paragraph 4.02.B:

- C. *Site Surveys:* Site survey information has been compiled from past records and limited field investigations and although stated with as much accuracy as possible, may contain errors or discrepancies. Contractor shall perform investigations as necessary to accomplish the Work. Any unknown item encountered that impacts the Work shall be handled under Article 4.03.

**SC-4.03.C.1 Possible Price and Times Adjustments** DELETE Paragraph 4.03C Possible Price and Times Adjustments in its entirety and REPLACE with the following:

4.03C. Contractor may only be entitled to an adjustment in price or time due to abnormal weather conditions or other conditions when such claim is validated by Engineer. However, Contractor will not be entitled to increase in price due to any variations in estimated to completed dredge quantities.

**SC-4.04.B.2 Underground Facilities; Not Shown or Indicated** AMEND the language in the second sentence of paragraph 4.04.B.2 to read as follows:

CHANGE the language from “An equitable adjustment shall be made in the Contract Price...” to “An equitable adjustment may be made in the Contract Price...”.

**SC-4.05 Reference Points** AMEND the language in the second sentence of Paragraph 4.05.A to read as follows:

CHANGE the language from “without prior written approval of Owner” to “without prior written approval of Owner and Engineer”.

**SC-4.06 Hazardous Environmental Conditions at Site** DELETE Paragraphs 4.06.A and 4.06.B in their entirety and INSERT the following in their place:

- A. No reports or drawings of hazardous conditions at the site are known to the Owner or Engineer.
- B. Not used.

**SC-4.06.G Hazardous Environmental Conditions at Site** DELETE Paragraphs 4.06.G in its entirety.

**SC-4.07 Site Investigation and Representation** ADD the following new paragraph immediately after Paragraph 4.06:

*SC-4.07 Site Investigation and Representation*

The Contractor acknowledges that he has satisfied himself as to the nature and location of the Work; the general and local conditions, particularly those bearing upon availability of transportation, disposal, handling and storage of materials; availability of labor, water, electric power, and roads; uncertainties of weather, river stages, or similar physical conditions at the site; the conformation and conditions of the ground; the character of equipment and facilities needed preliminary to and during the prosecution of the work; and all other matters which can in any affect the Work or the cost thereof under this Contract. The Contractor further acknowledges subject to conditions in Section 4.02 that he has satisfied himself as to the character, quality, and quantity of surface and subsurface materials and groundwater to be encountered from inspecting the site. Any failure by the Contractor to acquaint himself with all the available information will not relieve him from responsibility for properly estimating the difficulty or cost of successfully performing the Work. Neither the Owner nor the Engineer assumes responsibility for any conclusion or interpretation made by the Contractor.

## **ARTICLE 5 – BONDS AND INSURANCE**

**SC-5.03.B Certificates of Insurance** DELETE Paragraph 5.03.B in its entirety.

**SC-5.03 Certificates of Insurance** ADD the following new paragraph immediately after Paragraph 5.03.E:

- F. The Contractor shall be required to submit a Certificate of Insurance with every pay application; or, no later than every thirty (30) days for the term of Contract. If an approved Certificate of Insurance is not included with the pay application, then it will be considered non-compliant with the Contract Documents and returned to the Contractor.



**SC-5.04 Contractor's Liability Insurance** ADD the following new paragraph immediately after Paragraph 5.04.B:

- C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverages for not less than the following amounts or greater where required by Laws and Regulations:
1. Worker's Compensation, and related coverage under Paragraph 5.04.A.1 and A.2 of the General Conditions:
    - a. Statutory
    - b. Applicable Federal: Statutory (e.g. Longshoreman's)
    - c. Employer's Liability: \$100,000 or Statutory
  2. Contractor's General Liability under Paragraph 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:
    - a. General Aggregate: \$ 1,000,000.00
    - b. Products- Completed \$ 1,000,000.00  
Operations Aggregate
    - c. Personal and Advertising \$ 1,000,000.00  
Injury
    - d. Each Occurrence (Bodily \$ 1,000,000.00  
Injury and Property Damage)
    - e. Property Damage liability insurance will provide Explosion, Collapse and Under-ground coverages where applicable.
    - f. Excess or Umbrella Liability
      - 1) General Aggregate \$ 1,000,000.00
      - 2) Each Occurrence \$ 1,000,000.00
  3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:
    - a. Bodily Injury:

|               |                 |
|---------------|-----------------|
| Each Person   | \$ 1,000,000.00 |
| Each Accident | \$ 1,000,000.00 |
    - b. Property Damage:

|               |                 |
|---------------|-----------------|
| Each Accident | \$ 1,000,000.00 |
|---------------|-----------------|
    - c. Combined Single:

|          |                 |
|----------|-----------------|
| Limit of | \$ 1,000,000.00 |
|----------|-----------------|

4. The Contractual Liability coverage required by Paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following:
  - a. Bodily Injury:

|             |                 |
|-------------|-----------------|
| Each Person | \$ 1,000,000.00 |
|-------------|-----------------|
  - b. Property Damage:

|                  |                 |
|------------------|-----------------|
| Each Accident    | \$ 1,000,000.00 |
| Annual Aggregate | \$ 1,000,000.00 |
5. The list of names, other persons, or entities to be included on the policy as additional insured are as per Paragraph 5.11.

**SC-5.06.A Property Insurance** DELETE Paragraph 5.06.A in its entirety and INSERT the following in its place:

- A. When available, Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof.
  1. This insurance shall:
    - a. include the interests of Owner, Contractor, Subcontractors, Engineer and any other individuals or entities identified herein, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
    - b. in addition to the individuals and entities specified, include additional insured per Paragraph 5.11.
    - c. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
    - d. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
    - e. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
    - f. allow for partial utilization of the Work by Owner;
    - g. include testing and start up; and
    - h. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.
  2. Contractor shall be responsible for any deductible or self-insured retention.

3. The policies of insurance required to be purchased and maintained by Contractor in accordance with this Paragraph SC-5.06.A shall comply with the requirements of paragraph 5.06.C of the General Conditions.

**SC-5.06.B** DELETE this article in its entirety.

**SC-5.06.E** DELETE this Paragraph in its entirety.

**SC-5.07.A Waiver of Rights** DELETE the third and fourth sentences in their entirety.

**SC-5.07.B** DELETE this Paragraph in its entirety.

**SC-5.11 Additional Insured** ADD the following new paragraph immediately after Paragraph 5.10.

SC- 5.11 *Additional Insured*

- A. Where applicable, all insurance policies shall name the Owner and Engineer as herein before defined as additional insured.

## **ARTICLE 6 – CONTRACTOR’S RESPONSIBILITY**

**SC-6.06 Concerning Subcontractor’s, Suppliers, and Others** ADD a new paragraph immediately after Paragraph 6.06.G:

- H. Owner or Engineer may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on Work performed for Contractor by a particular Subcontractor or Supplier.

**SC-6.07.B Patent Fees and Royalties** DELETE this paragraph in its entirety.

**SC-6.12 Record Documents** ADD a new paragraph immediately after Paragraph 6.12.A:

- B. Owner may withhold progress payments until record documents are properly updated. Final payment may not be made until all record documents are accepted in writing by Owner.

**SC-6.17 Shop Drawings and Samples** ADD the following new paragraphs immediately after Paragraph 6.17.E:

- F. Contractor shall furnish required submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than three submittals. Engineer will record Engineer’s time for reviewing subsequent submittals of Shop Drawings, samples or other items requiring approval and Contractor shall reimburse Owner for Engineer’s charges for such time.
- G. In the event that Contractor requests a substitution for a previously approved item, Contractor shall reimburse Owner for Engineer’s charges for such time unless the need for such substitution is beyond the control of Contractor.

**SC-6.19 Contractor’s General Warranty ~~Warranty~~ and Guarantee** ADD the following new paragraph immediately after Paragraph 6.19.C:

- D. Unless additional warranties are included in the technical specifications, the Contractor shall guarantee all Work for a period of one-year following Substantial Completion.

**SC-6.20 Indemnification** DELETE this article in its entirety and INSERT the following in its place:

- A. Contractor shall defend, indemnify and hold harmless Owner and Engineer, their agents, servants, employees, officers, directors, members, partners, successors and assigns from actions, causes, suits, costs, claims, damages, expenses and demands whatsoever in law or in equity, (including but not limited to all fees and charges of engineers, architects, and attorneys and all court or other dispute resolution costs), with

respect to, or on account of, any injury, including bodily injury, disability or death, or damages to property, including loss of the use thereof, in any way attributable to or in connection with performance of the Contractor under this Contract.

#### **ARTICLE 7 – OTHER WORK AT SITE**

**SC-7.04 *Claims Between Contractors*** ADD a new paragraph immediately after Paragraph 7.03:

##### ***SC-7.04 Claims Between Contractors***

- A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or the construction coordinator, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law.
- B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, the construction coordinator and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any other contractor against Owner, Engineer, Engineer's Consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor's performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, or the construction coordinator on account of any such damage or Claim.
- C. If Contractor is delayed at any time in performing or furnishing Work by any act or neglect of another contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Engineer, and construction coordinator for any delay, disruption, interference, or hindrance caused by any other contractor. This paragraph does not prevent recovery from Owner, Engineer, or construction coordinator for activities that are their respective responsibilities.

#### **ARTICLE 8 – OWNER'S RESPONSIBILITIES**

**SC-8.02 *Replacement of Engineer*** AMEND the language of Paragraph 8.02.A to read as follows: INSERT "resignation or" immediately before "termination". DELETE "to whom Contractor makes no reasonable objection,".

**SC-8.11 *Evidence of Financial Arrangements*** Add the following new paragraph immediately after Paragraph 8.11.A:

- B. On request of Contractor prior to the execution of any Change Order involving a significant increase in the Contract Price, Owner shall furnish to Contractor reasonable evidence that adequate financial arrangements have been made by Owner to enable Owner to fulfil the increased financial obligations to be undertaken by Owner as a result of such Change Order.

#### **ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION**

**SC-9.03 *Project Representative*** AMEND the language in the second sentence of Paragraph 9.03.A to read as follows:

DELETE the language "the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in".

**SC-9.07A *Determination for Unit Price Work*** AMEND the language in the first sentence of Paragraph 9.07 to read as follows:

“Engineer will determine the actual quantities and classifications of completed Unit Price Work performed by Contractor.”

**SC-9.08.B *Decisions on Requirements of Contract Documents and Acceptability of Work*** AMEND the language in the first sentence of Paragraph 9.08.B to read as follows:

“Engineer will, with reasonable promptness, render a written recommendation or decision on the issue referred.”

**SC-9.08.B *Decisions on Requirements of Contract Documents and Acceptability of Work*** AMEND the language in the last sentence of Paragraph 9.08.B to read as follows:

“The date of the Engineer’s recommendation / decision shall be the date it is rendered in writing and provided to both parties.”

**SC-9.08.C *Decisions on Requirements of Contract Documents and Acceptability of Work*** DELETE Paragraph 9.08.C in its entirety and INSERT the following in its place:

“Engineers written recommendation or decision on the issue referred is subject to the provision of Paragraph 10.05.”

#### **ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

**C-10.05.A *Engineer’s Decision Required*** DELETE the last sentence of Paragraph 10.05.A.

**SC-10.05.C Item 1, REPLACE “deny” with “recommend denial of”. Item 2, REPLACE “approve” with “recommend approval of”.**

**SC-10.05.E** DELETE Paragraph 10.05.E in its entirety and INSERT the following in its place:

“Owner or Contractor may invoke dispute resolution in Article 16 within 30 days of the engineer’s recommendation of denial or approval.”

#### **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

**SC-11.03.B** Amend the language in the second sentence of Paragraph 11.03.B as follows:

“*Determinations* of actual quantities and classifications of completed Unit Price Work performed by the Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.”

**SC-11.03.D** DELETE Paragraph 11.03.D in its entirety and INSERT the following in its place:

- D. There shall be no increase in price due to a variation in actual dredge quantities from the estimated quantities and any variation shall be the sole responsibility of Contractor in formulation of his bid and shall include any possible variations from estimate.

#### **ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT ITEMS**

No Comment.

#### **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTIONS, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

**SC-13.03.A** ADD the following new sentence immediately after the first sentence of Paragraph 13.03.A:

Timely notice shall be as stated in the appropriate specification and no less than 24 hours prior to scheduling the Work.

## **ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION**

**SC-14.02.A.1 *Application for Payments*** AMEND the language in the first sentence of Paragraph 14.02.A.1 to read as follows:

CHANGE the language from “At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application accompanied by such supporting documentation as is required by the Contract Documents.” to “On or before the 20<sup>th</sup> day of each month, Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed by the 15<sup>th</sup> of that month, accompanied by such supporting documentation as is required by the Contract Documents.”

**SC-14.02.A.3 *Application for Payments*** DELETE Paragraph 14.02.A.3 in its entirety and INSERT the following in its place:

3. The Owner will retain 10% of the amount of each estimate until final completion of the project. On monthly estimates subsequent to the first estimate submitted that includes invoices for stored materials for which payment to the Contractor has been made, there shall be a signed statement that the invoices have been paid by the Contractor.

The statement shall read as follows:

This is to certify that payment has been made for invoiced materials included in previous monthly estimate no. \_\_\_\_\_ thru \_\_\_\_\_.

Signed: \_\_\_\_\_

In the event that such statement is not furnished or the manufacturers or material suppliers notify the Owner in writing that they have not been paid for materials included on previous estimates, the Owner may reduce payment in accordance with Paragraph 14.02.

**SC-14.02.C *Payment Becomes Due*** AMEND the language in the first sentence of Paragraph 14.02.C.1 to read as follows:

CHANGE the language from “Ten days after presentation of the Application for Payment to Owner,” to “Ten days after approval of the Application for Payment by Owner”.

**SC-14.07.C.1 *Payment Becomes Due*** AMEND the language in the first sentence of Paragraph 14.07.C.1 to read as follows:

CHANGE the language from “Thirty days” to “Sixty days”

**SC-14.09.A.1 *Waiver of Claims*** DELETE this article in its entirety.

## **ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

No comment.

**SC-15.02.C Owner May Terminate for Cause** DELETE the second sentence of Paragraph 15.02.C.

**SC-15.02.D** DELETE in its entirety.

**SC-15.02.F** DELETE in its entirety and REPLACE with: “The termination provisions of the Standard General Conditions of the Construction Contract and the Supplementary Conditions of the Construction Contract shall supercede the termination procedures of any performance bond provided under the provisions of paragraph 5.01A.”

#### **ARTICLE 16 – DISPUTE RESOLUTION**

SC-16.01 Delete Paragraph 16.01 in its entirety and insert the following in its place:

SC-16.01 Meet to Confer and Negotiate

- A. Within 30 days of notice of Engineers recommended action under 10.05C3 or 10.05D, Owner or Contractor may give to the other party written notice of intent to submit the Claim to a process of bilateral negotiations as set forth below
- B. Within 30 days of the delivery of such notice, Owner and Contractor shall meet and confer regarding the Claim. A good-faith effort to negotiate resolution shall be made by both parties.
- C. If the negotiations contemplated by Paragraph SC-16.01.B are unsuccessful, management representatives of Owner and Contractor at least one tier above the individuals who met under SC16.01.B shall meet, confer, and negotiate within 30 days of the closure of the unsuccessful negotiations.
- D. If the Claim is not resolved by negotiation, Engineer’s action under Paragraph 10.05C or a denial pursuant to Paragraphs 10.05C3 or 10.05D may be submitted to a court of competent jurisdiction to be determined or the parties may agree to submit the claim to another dispute resolution process
- E. Nothing in this article shall be deemed to prohibit or interfere with the rights of the parties to file a court action where necessary to preserve their rights to proceed with litigation.

#### **ARTICLE 17 – MISCELLANEOUS**

**SC-17.05 Controlling Law** DELETE Paragraph 17.05.A in its entirety and INSERT the following in its place:

- A. The terms and conditions of this Contract shall be construed and interpreted under, and all respective rights and duties shall be governed by, the laws of the State of Mississippi. Wherever applicable, each provision of these Contract Documents shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of these Contract Documents shall be prohibited by or invalid under applicable law, such provisions shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of these Contract Documents.
- B. This Contract shall not be construed more strictly against one party than the other merely by virtue of the fact that it may have been prepared by one of the parties.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

## STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*—The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the

Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*—See Paragraph 11.01 for definition.

17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*—The individual or entity named as such in the Agreement.

20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*—Sections of Division 1 of the Specifications.

22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*—Polychlorinated biphenyls.

31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such

as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands

furnished by Owner which are designated for the use of Contractor.

42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.

47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. *Unit Price Work*—Work to be paid for on the basis of unit prices.

50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials

and equipment into such construction, all as required by the Contract Documents.

51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

### B. Intent of Certain Terms or Adjectives:

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or *terms* of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to *describe* an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

### C. Day:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

### D. Defective:

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents; or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
- c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

### 2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

### 2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

### 2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

### 2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during



performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

#### 2.06 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

#### 2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the *Contract Times*. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it *provides* a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to *form* and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

### ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

#### 3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

#### 3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at *the* time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, *or* code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

#### 3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field *measurements*. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor *discovers* any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving *Discrepancies*:

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions

in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's *written* interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its *consultants*, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other *project* without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the

party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

**ARTICLE 4 – AVAILABILITY OF LANDS;  
SUBSURFACE AND PHYSICAL CONDITIONS;  
HAZARDOUS ENVIRONMENTAL CONDITIONS;  
REFERENCE POINTS**

**4.01 Availability of Lands**

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

**4.02 Subsurface and Physical Conditions**

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and

2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

**4.03 Differing Subsurface or Physical Conditions**

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such

condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners,

employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data;

b. locating all Underground Facilities shown or indicated in the Contract Documents;

c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the

existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.05 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the *scope* of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) *secure* or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area *until* after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 – BONDS AND INSURANCE

### 5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

C. 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 it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

### 5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance *companies* that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### 5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified

in the Supplementary Conditions, *certificates* of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, *certificates* of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

C. Failure of Owner to demand such certificates or other evidence of *Contractor's* full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect *Contractor*.

E. The insurance *and* insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

#### 5.04 *Contractor's Insurance*

A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of *or* result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

6. include completed operations coverage:

a. Such insurance shall remain in effect for two years after final payment.

b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

#### 5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability *insurance* as will protect Owner against claims which may arise from operations under the Contract Documents.

#### 5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;

2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing

by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or *Laws* and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or *renewal* refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the



Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

#### 5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, *agents*, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and *Engineer*, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

#### 5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

#### 5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and *maintained* by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or

of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

#### 5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property *insurance* pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

### ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

#### 6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, *methods*, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced *without* written notice to Owner and Engineer except under extraordinary circumstances.

#### 6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform *construction* as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or *protection* of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

#### 6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility *for* all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. *All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.*

#### 6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

## 6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and

3) it has a proven record of performance and availability of responsive service.

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times; and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,

b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

c) whether incorporation or use of the proposed substitute item in connection

with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services; and

4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, *technique*, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made *pursuant* to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. *Special Guarantee:* Owner may require Contractor to furnish at *Contractor's* expense a special performance guarantee or other surety with respect to any substitute.

E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by *Contractor* pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner

for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

#### 6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date *indicated* for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor

2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The *divisions* and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement *between* Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### 6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the

performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are *applicable* at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### 6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the *Work*. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be

responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in *Contract Price* or *Contract Times*. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

#### 6.10 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and *Regulations* of the place of the Project which are applicable during the performance of the Work.

#### 6.11 Use of Site and Other Areas

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.12 Record Documents

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during *construction*. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

#### 6.13 Safety and Protection

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in *connection* with the Work. Such responsibility does not relieve Subcontractors of their

responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

D. Contractor shall inform Owner and Engineer of the specific *requirements* of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 *Safety Representative*

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and *responsibilities* shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 6.15 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract *Documents* have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to *Engineer* for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

##### 1. *Shop Drawings:*

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria,

materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. Samples:

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work *performed* prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with

respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.



6.18 *Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage 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 therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A 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 such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

#### **ARTICLE 7 – OTHER WORK AT THE SITE**

##### 7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

##### 7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

### ARTICLE 8 – OWNER'S RESPONSIBILITIES

#### 8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

#### 8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

#### 8.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

#### 8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

#### 8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties with respect to providing lands and easements and providing engineering surveys to

establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

#### 8.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

#### 8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

#### 8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

#### 8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

#### 8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

#### 8.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

#### 8.12 *Compliance with Safety Program*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

## ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

### 9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

### 9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the

responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

### 9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

### 9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

### 9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

### 9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed

by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

#### 9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

#### 9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or

entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

#### 9.10 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

### ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

#### 10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

#### 10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

#### 10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

#### 10.04 *Notification to Surety*

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable

bond will be adjusted to reflect the effect of any such change.

#### 10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part;

2. approve the Claim; or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **11.01 *Cost of the Work***

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in

which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

## 11.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances:*

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand



for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance:*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be *deemed* to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. *Determinations* of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit *price* will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the *Contract Price* in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

**ARTICLE 12 – CHANGE OF CONTRACT PRICE;  
CHANGE OF CONTRACT TIMES**

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any *Claim* for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be *determined* as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at

whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

#### 12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times *shall* be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

#### 12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a *Claim* is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the

performance or *progress* of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the *fault* of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the *control* of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

### **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

#### 13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or *Engineer* has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

#### 13.02 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's

safety procedures and programs so that they may comply therewith as applicable.

### 13.03 Tests and Inspections

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be *inspected*, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the *Work*; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without *written* concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.

F. Uncovering Work as provided in Paragraph 13.03.E *shall* be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's

intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

### 13.04 Uncovering Work

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be *uncovered* for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, *expose*, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of *repair* or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

### 13.05 Owner May Stop the Work

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or *fails* to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

### 13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not *defective*. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no *action* that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

### 13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not *promptly* comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and

replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of *equipment* is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended *for* an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The *provisions* of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

### 13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to *all* fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

### 13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if

Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such *corrective* or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work *attributable* to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

## **ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION**

### **14.01 *Schedule of Values***

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress

payments on account of Unit Price Work will be based on the number of units completed.

### **14.02 *Progress Payments***

#### **A. *Applications for Payments:***

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

#### **B. *Review of Applications:***

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

#### C. *Payment Becomes Due:*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

#### D. *Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set-off against the amount recommended; or

d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs

14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

#### 14.03 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

#### 14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of *Substantial Completion* which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If,

after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and *usable* part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.07 *Final Payment*

##### A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
- b. consent of the surety, if any, to final payment;
- c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

##### B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

##### C. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

#### 14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if



Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

#### 14.09 *Waiver of Claims*

A. The *making* and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

### ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

#### 15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

#### 15.02 *Owner May Terminate for Cause*

A. The *occurrence* of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's repeated disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a *performance* bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

#### 15.03 Owner May Terminate For Convenience

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other *right* or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of *anticipated* profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 Contractor May Stop Work or Terminate

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer *fails* to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven *days* after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

### ARTICLE 16 – DISPUTE RESOLUTION

#### 16.01 Methods and Procedures

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become

final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
2. agrees with the other party to submit the Claim to another dispute resolution process; or
3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

## ARTICLE 17 – MISCELLANEOUS

### 17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been *validly* given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### 17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period *falls* on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

### 17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 17.04 *Survival of Obligations*

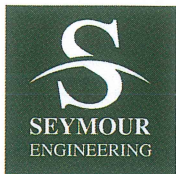
A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with *the* Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

### 17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

### 17.06 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.



MEMORANDUM

DATE: November 12, 2019

TO: The City Council of The City of Gautier, Mississippi

FROM: Mark Seymour, P.E., President  
Seymour Engineering, PLLC

SUBJECT: Rejection of Low Bid in lieu of Lowest and Best Bid  
Robinson Still Road Water and Sewer Project

Please be advised that bids for this project were accepted on September 27, 2019. I have included the bid tabulation for your review. As you will notice from the bid tabulation, Jay Bearden Construction Company (Contractor) provided the lowest bid in the amount of \$195,425.63. Upon receipt of this bid, it was requested that the Contractor provide references for similar work regarding scope and price.

When contacting the various references, the general consensus was that the Contractor is highly unorganized and has issues remaining on schedule. Some references expressed a need for additional oversight on behalf of the Engineer during construction as the Contractor was willing to cut corners; thus, resulting in a lower quality working product after construction is complete. This brings about the concern for operational issues of the system in the future as one reference explained that water main failures were occurring due to this low-quality work three years after the project's completion. This is especially concerning since the warranty period for failures is only one year after completion. Another reference spoke of an issue where the Contractor abandoned the job prior to a grant deadline and left the Owner scrambling to figure out how to complete the project and not expend additional funds under the grant.

It is also known that the Contractor is currently in two separate lawsuits with municipalities in Harrison County. One being with the City of Gulfport concerning a roadway paving and drainage project and the other being with the Harrison County Utility Authority concerning a gravity sewer project. However, representatives of these municipalities refused to comment on the status or circumstances of these lawsuits.

Because of these reasons, I feel it would be in the best interest of the City to reject Jay Bearden Construction Company's bid and award the construction contract to the next lowest and best bidder, Hudson Contracting, Inc. in their bid amount of \$216,910.00. Hudson Contracting is a reputable company and has performed several installations of similar systems in Jackson County.

Mark Seymour, P.E., President  
Seymour Engineering, PLLC





ROBINSON STILL ROAD WATER AND SEWER  
CITY OF GAUTIER, MIISSISSIPPI  
CONTRACTOR'S BID TABULATION

Bid Opening: Friday, September 27, 2019, at 2:00 P.M. Central Time  
Location: Gautier City Hall, 3330 Highway 90, Gautier, MS 3\*9553

| Contractor<br>Address<br>City, State |                                                                                                                          |          |      | Engineer's Estimate |              | DNA Underground, Inc.<br>16101 South Swan Rd.<br>Gulfport, MS 39503<br>20907-MC |              | F & F Construction, Inc.<br>21525 Blackwell Farm Road<br>Saucier, MS 39574<br>11070-MC |              | Gulf Coast Underground<br>5655 Middle Rd<br>Theodore, AL 39582<br>14487-MC |              | Hudson Contracting, Inc.<br>P.O. Box 30<br>Waynesboro, MS 39367<br>05632-MC |              |
|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------|----------|------|---------------------|--------------|---------------------------------------------------------------------------------|--------------|----------------------------------------------------------------------------------------|--------------|----------------------------------------------------------------------------|--------------|-----------------------------------------------------------------------------|--------------|
| Item. No.                            | Description                                                                                                              | Quantity | Unit | Unit Price          | Extension    | Unit Price                                                                      | Extension    | Unit Price                                                                             | Extension    | Unit Price                                                                 | Extension    | Unit Price                                                                  | Extension    |
| BASE BID                             |                                                                                                                          |          |      |                     |              |                                                                                 |              |                                                                                        |              |                                                                            |              |                                                                             |              |
| 1                                    | Mobilization                                                                                                             | 1        | LS   | \$ 22,000.00        | \$ 22,000.00 | \$ 82,475.00                                                                    | \$ 82,475.00 | \$ 22,800.00                                                                           | \$ 22,800.00 | \$ 35,000.00                                                               | \$ 35,000.00 | \$ 45,000.00                                                                | \$ 45,000.00 |
| 2                                    | Clearing and Grubbing                                                                                                    | 1        | LS   | \$ 2,000.00         | \$ 2,000.00  | \$ 10,000.00                                                                    | \$ 10,000.00 | \$ 2,000.00                                                                            | \$ 2,000.00  | \$ 10,000.00                                                               | \$ 10,000.00 | \$ 1,500.00                                                                 | \$ 1,500.00  |
| 3                                    | Connect 2" PVC Sewer Force Main to Exist MH                                                                              | 1        | LS   | \$ 1,100.00         | \$ 1,100.00  | \$ 500.00                                                                       | \$ 500.00    | \$ 1,000.00                                                                            | \$ 1,000.00  | \$ 1,200.00                                                                | \$ 1,200.00  | \$ 1,500.00                                                                 | \$ 1,500.00  |
| 4                                    | Removal of Pavement (All Types and Thicknesses)                                                                          | 60       | SY   | \$ 7.00             | \$ 420.00    | \$ 10.00                                                                        | \$ 600.00    | \$ 8.00                                                                                | \$ 480.00    | \$ 12.50                                                                   | \$ 750.00    | \$ 5.00                                                                     | \$ 300.00    |
| 5                                    | Saw Cut Pavement (All Types and Thicknesses)                                                                             | 250      | LF   | \$ 4.50             | \$ 1,125.00  | \$ 10.00                                                                        | \$ 2,500.00  | \$ 4.00                                                                                | \$ 1,000.00  | \$ 8.00                                                                    | \$ 2,000.00  | \$ 3.00                                                                     | \$ 750.00    |
| 6                                    | Dewatering**                                                                                                             | 400      | LF   | \$ 25.00            | \$ 10,000.00 | \$ 20.00                                                                        | \$ 8,000.00  | \$ 1.00                                                                                | \$ 400.00    | \$ 15.00                                                                   | \$ 6,000.00  | \$ 3.00                                                                     | \$ 1,200.00  |
| 7                                    | Undercut Excavation (PM)*                                                                                                | 120      | CY   | \$ 13.00            | \$ 1,560.00  | \$ 6.00                                                                         | \$ 720.00    | \$ 7.00                                                                                | \$ 840.00    | \$ 17.00                                                                   | \$ 2,040.00  | \$ 5.00                                                                     | \$ 600.00    |
| 8                                    | Select Bedding Material (PM)*                                                                                            | 175      | CY   | \$ 18.00            | \$ 3,150.00  | \$ 18.00                                                                        | \$ 3,150.00  | \$ 65.00                                                                               | \$ 11,375.00 | \$ 30.00                                                                   | \$ 5,250.00  | \$ 10.00                                                                    | \$ 1,750.00  |
| 9                                    | 10" Water Main C900 PVC                                                                                                  | 2,300    | LF   | \$ 28.00            | \$ 64,400.00 | \$ 24.00                                                                        | \$ 55,200.00 | \$ 21.00                                                                               | \$ 48,300.00 | \$ 27.20                                                                   | \$ 62,560.00 | \$ 28.00                                                                    | \$ 64,400.00 |
| 10                                   | 10" Gate Valve with Box and Pad                                                                                          | 1        | EA   | \$ 1,800.00         | \$ 1,800.00  | \$ 1,750.00                                                                     | \$ 1,750.00  | \$ 1,750.00                                                                            | \$ 1,750.00  | \$ 2,050.00                                                                | \$ 2,050.00  | \$ 2,500.00                                                                 | \$ 2,500.00  |
| 11                                   | Air Release/Vacuum Valve                                                                                                 | 2        | EA   | \$ 4,400.00         | \$ 8,800.00  | \$ 5,000.00                                                                     | \$ 10,000.00 | \$ 5,000.00                                                                            | \$ 11,000.00 | \$ 5,000.00                                                                | \$ 10,000.00 | \$ 4,500.00                                                                 | \$ 9,000.00  |
| 12                                   | 1.25" Sched 80 PVC Sewer Force Main                                                                                      | 180      | LF   | \$ 14.00            | \$ 2,520.00  | \$ 18.00                                                                        | \$ 3,240.00  | \$ 5.00                                                                                | \$ 900.00    | \$ 9.30                                                                    | \$ 1,674.00  | \$ 8.00                                                                     | \$ 1,440.00  |
| 13                                   | 1.5" Sched 80 PVC Sewer Force Main                                                                                       | 1,210    | LF   | \$ 16.00            | \$ 19,360.00 | \$ 18.00                                                                        | \$ 21,780.00 | \$ 5.75                                                                                | \$ 6,957.50  | \$ 8.05                                                                    | \$ 9,740.50  | \$ 10.00                                                                    | \$ 12,100.00 |
| 14                                   | 2" Sched 80 PVC Sewer Force Main                                                                                         | 1,120    | LF   | \$ 18.00            | \$ 20,160.00 | \$ 18.00                                                                        | \$ 20,160.00 | \$ 6.25                                                                                | \$ 7,000.00  | \$ 8.90                                                                    | \$ 9,968.00  | \$ 12.00                                                                    | \$ 13,440.00 |
| 15                                   | 1.5" HDPE Directional Bored Sewer Force Main<br>(Including all Fittings for Transition)                                  | 185      | LF   | \$ 22.00            | \$ 4,070.00  | \$ 30.00                                                                        | \$ 5,550.00  | \$ 35.00                                                                               | \$ 6,475.00  | \$ 30.50                                                                   | \$ 5,642.50  | \$ 15.00                                                                    | \$ 2,775.00  |
| 16                                   | 2" HDPE Directional Bored Sewer Force Main<br>(Including all Fittings for Transition)                                    | 120      | LF   | \$ 28.00            | \$ 3,360.00  | \$ 30.00                                                                        | \$ 3,600.00  | \$ 45.00                                                                               | \$ 5,400.00  | \$ 33.50                                                                   | \$ 4,020.00  | \$ 18.00                                                                    | \$ 2,160.00  |
| 17                                   | 10" HDPE Directional Bored Water Main<br>(Including all Fittings for Transition)                                         | 120      | LF   | \$ 100.00           | \$ 12,000.00 | \$ 120.00                                                                       | \$ 14,400.00 | \$ 132.00                                                                              | \$ 15,840.00 | \$ 140.00                                                                  | \$ 16,800.00 | \$ 80.00                                                                    | \$ 9,600.00  |
| 18                                   | Fire Hydrant Assembly<br>(Includes 6" Hydrant Lead, 6" Gate Valve, Box & Pad)                                            | 5        | EA   | \$ 3,500.00         | \$ 17,500.00 | \$ 3,800.00                                                                     | \$ 19,000.00 | \$ 3,050.00                                                                            | \$ 15,250.00 | \$ 3,600.00                                                                | \$ 18,000.00 | \$ 4,500.00                                                                 | \$ 22,500.00 |
| 19                                   | Ductile Iron Fittings*                                                                                                   | 1,150    | LB   | \$ 6.00             | \$ 6,900.00  | \$ 5.00                                                                         | \$ 5,750.00  | \$ 6.00                                                                                | \$ 6,900.00  | \$ 6.50                                                                    | \$ 7,475.00  | \$ 6.00                                                                     | \$ 6,900.00  |
| 20                                   | 10" x 12" Tapping Sleeve and Valve                                                                                       | 1        | EA   | \$ 2,500.00         | \$ 2,500.00  | \$ 4,300.00                                                                     | \$ 4,300.00  | \$ 3,950.00                                                                            | \$ 3,950.00  | \$ 6,300.00                                                                | \$ 6,300.00  | \$ 5,500.00                                                                 | \$ 5,500.00  |
| 21                                   | 2" Blow Off Valve (Including Box, etc.)                                                                                  | 1        | EA   | \$ 2,800.00         | \$ 2,800.00  | \$ 1,800.00                                                                     | \$ 1,800.00  | \$ 950.00                                                                              | \$ 950.00    | \$ 1,400.00                                                                | \$ 1,400.00  | \$ 1,275.00                                                                 | \$ 1,275.00  |
| 22                                   | 1" Single Water Service Assembly (Including Service Tubing, Bore, Saddle, Corp. Stop, Curb Stop, Meter Box, Meter, etc.) | 5        | EA   | \$ 1,500.00         | \$ 7,500.00  | \$ 2,000.00                                                                     | \$ 10,000.00 | \$ 2,500.00                                                                            | \$ 12,500.00 | \$ 4,050.00                                                                | \$ 20,250.00 | \$ 300.00                                                                   | \$ 1,500.00  |
| 23                                   | 1.25" Single Sewer Service Assembly (Including Service Piping, Bore, Tee, Valve, Valve Box, Check Valve, etc.)           | 5        | EA   | \$ 1,800.00         | \$ 9,000.00  | \$ 1,050.00                                                                     | \$ 5,250.00  | \$ 6,000.00                                                                            | \$ 30,000.00 | \$ 9,150.00                                                                | \$ 45,750.00 | \$ 300.00                                                                   | \$ 1,500.00  |
| 24                                   | Crushed Limestone (#57)*                                                                                                 | 15       | CY   | \$ 90.00            | \$ 1,350.00  | \$ 85.00                                                                        | \$ 1,275.00  | \$ 75.00                                                                               | \$ 1,125.00  | \$ 75.00                                                                   | \$ 1,125.00  | \$ 50.00                                                                    | \$ 750.00    |
| 25                                   | Hot Bituminous Pavement (MDOT ST, 9.5 mm mix)(4" Thick)*                                                                 | 80       | SY   | \$ 125.00           | \$ 10,000.00 | \$ 90.00                                                                        | \$ 7,200.00  | \$ 45.00                                                                               | \$ 3,600.00  | \$ 80.00                                                                   | \$ 6,400.00  | \$ 55.00                                                                    | \$ 4,400.00  |
| 26                                   | Geogrid (Model BS1100)*                                                                                                  | 40       | SY   | \$ 5.00             | \$ 200.00    | \$ 2.00                                                                         | \$ 80.00     | \$ 9.50                                                                                | \$ 380.00    | \$ 7.50                                                                    | \$ 300.00    | \$ 8.00                                                                     | \$ 320.00    |
| 27                                   | Silt Fence                                                                                                               | 850      | LF   | \$ 3.50             | \$ 2,975.00  | \$ 2.00                                                                         | \$ 1,700.00  | \$ 3.00                                                                                | \$ 2,550.00  | \$ 4.00                                                                    | \$ 3,400.00  | \$ 1.00                                                                     | \$ 850.00    |
| 28                                   | Straw Wattles                                                                                                            | 50       | EA   | \$ 45.00            | \$ 2,250.00  | \$ 40.00                                                                        | \$ 2,000.00  | \$ 30.00                                                                               | \$ 1,500.00  | \$ 50.00                                                                   | \$ 2,500.00  | \$ 15.00                                                                    | \$ 750.00    |
| 29                                   | Combination Fertilizer (13-13-13)                                                                                        | 150      | LBS  | \$ 3.00             | \$ 450.00    | \$ 2.00                                                                         | \$ 300.00    | \$ 0.50                                                                                | \$ 75.00     | \$ 1.90                                                                    | \$ 285.00    | \$ 1.00                                                                     | \$ 150.00    |
| 30                                   | Plant Establishment                                                                                                      | 0.3      | AC   | \$ 2,000.00         | \$ 600.00    | \$ 10,000.00                                                                    | \$ 3,000.00  | \$ 11,500.00                                                                           | \$ 3,450.00  | \$ 3,650.00                                                                | \$ 1,095.00  | \$ 500.00                                                                   | \$ 150.00    |
| 31                                   | Solid Sod                                                                                                                | 50       | SY   | \$ 12.00            | \$ 600.00    | \$ 20.00                                                                        | \$ 1,000.00  | \$ 4.00                                                                                | \$ 200.00    | \$ 10.00                                                                   | \$ 500.00    | \$ 7.00                                                                     | \$ 350.00    |
| TOTAL BID                            |                                                                                                                          |          |      | \$                  | 242,450.00   | \$                                                                              | 306,280.00   | \$                                                                                     | 225,947.50   | \$                                                                         | 299,475.00   | \$                                                                          | 216,910.00   |

= Mathematical errors were found in the bid, and the amount shown shows the corrected amount.





ROBINSON STILL ROAD WATER AND SEWER  
CITY OF GAUTIER, MISSISSIPPI  
CONTRACTOR'S BID TABULATION

Bid Opening: Friday, September 27, 2019, at 2:00 P.M. Central Time  
Location: Gautier City Hall, 3330 Highway 90, Gautier, MS 3\*9553

|                                      |                     |                                                                                                |                                                                                 |                                                                   |                                                                                         |
|--------------------------------------|---------------------|------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Contractor<br>Address<br>City, State | Engineer's Estimate | Jay Bearden Construction Company<br>662 Old Highway 49 South<br>Richland, MS 39218<br>09155-MC | Moran Hauling, Inc.<br>10380 Three Rivers Rd.<br>Gulfport, MS 39503<br>09083-MC | SCI, Inc.<br>13520 Old Highway 67<br>Biloxi, MS 39532<br>04939-MC | Twin L Construction, Inc.<br>8292 Firetower Rd.<br>Pass Christian, MS 39571<br>08365-MC |
|--------------------------------------|---------------------|------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-------------------------------------------------------------------|-----------------------------------------------------------------------------------------|

| Item. No. | Description                                                                                                              | Quantity | Unit | Unit Price   | Extension    | Unit Price   | Extension    | Unit Price   | Extension    | Unit Price   | Extension    | Unit Price   | Extension    |
|-----------|--------------------------------------------------------------------------------------------------------------------------|----------|------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| BASE BID  |                                                                                                                          |          |      |              |              |              |              |              |              |              |              |              |              |
| 1         | Mobilization                                                                                                             | 1        | LS   | \$ 22,000.00 | \$ 22,000.00 | \$ 16,000.00 | \$ 16,000.00 | \$ 14,500.00 | \$ 14,500.00 | \$ 11,123.70 | \$ 11,123.70 | \$ 17,080.00 | \$ 17,080.00 |
| 2         | Clearing and Grubbing                                                                                                    | 1        | LS   | \$ 2,000.00  | \$ 2,000.00  | \$ 15,000.00 | \$ 15,000.00 | \$ 7,500.00  | \$ 7,500.00  | \$ 3,500.00  | \$ 3,500.00  | \$ 7,826.00  | \$ 7,826.00  |
| 3         | Connect 2" PVC Sewer Force Main to Exist MH                                                                              | 1        | LS   | \$ 1,100.00  | \$ 1,100.00  | \$ 68.68     | \$ 68.68     | \$ 3,000.00  | \$ 3,000.00  | \$ 600.00    | \$ 600.00    | \$ 1,067.00  | \$ 1,067.00  |
| 4         | Removal of Pavement (All Types and Thicknesses)                                                                          | 60       | SY   | \$ 7.00      | \$ 420.00    | \$ 3.00      | \$ 180.00    | \$ 5.40      | \$ 324.00    | \$ 5.00      | \$ 300.00    | \$ 8.55      | \$ 513.00    |
| 5         | Saw Cut Pavement (All Types and Thicknesses)                                                                             | 250      | LF   | \$ 4.50      | \$ 1,125.00  | \$ 3.00      | \$ 750.00    | \$ 7.15      | \$ 1,787.50  | \$ 5.00      | \$ 1,250.00  | \$ 9.25      | \$ 2,312.50  |
| 6         | Dewatering**                                                                                                             | 400      | LF   | \$ 25.00     | \$ 10,000.00 | \$ 3.00      | \$ 1,200.00  | \$ 8.50      | \$ 3,400.00  | \$ 5.00      | \$ 2,000.00  | \$ 17.80     | \$ 7,120.00  |
| 7         | Undercut Excavation (PM)*                                                                                                | 120      | CY   | \$ 13.00     | \$ 1,560.00  | \$ 6.00      | \$ 720.00    | \$ 10.13     | \$ 1,215.60  | \$ 13.00     | \$ 1,560.00  | \$ 21.35     | \$ 2,562.00  |
| 8         | Select Bedding Material (PM)*                                                                                            | 175      | CY   | \$ 18.00     | \$ 3,150.00  | \$ 14.00     | \$ 2,450.00  | \$ 26.28     | \$ 4,599.00  | \$ 13.00     | \$ 2,275.00  | \$ 26.35     | \$ 4,611.25  |
| 9         | 10" Water Main C900 PVC                                                                                                  | 2,300    | LF   | \$ 28.00     | \$ 64,400.00 | \$ 23.74     | \$ 54,602.00 | \$ 25.47     | \$ 58,581.00 | \$ 34.70     | \$ 79,810.00 | \$ 26.70     | \$ 61,410.00 |
| 10        | 10" Gate Valve with Box and Pad                                                                                          | 1        | EA   | \$ 1,800.00  | \$ 1,800.00  | \$ 3,540.00  | \$ 3,540.00  | \$ 3,650.00  | \$ 3,650.00  | \$ 2,033.30  | \$ 2,033.30  | \$ 2,990.00  | \$ 2,990.00  |
| 11        | Air Release/Vacuum Valve                                                                                                 | 2        | EA   | \$ 4,400.00  | \$ 8,800.00  | \$ 3,345.00  | \$ 6,690.00  | \$ 4,650.00  | \$ 9,300.00  | \$ 7,160.00  | \$ 14,320.00 | \$ 8,538.00  | \$ 17,076.00 |
| 12        | 1.25" Sched 80 PVC Sewer Force Main                                                                                      | 180      | LF   | \$ 14.00     | \$ 2,520.00  | \$ 9.17      | \$ 1,650.60  | \$ 13.33     | \$ 2,399.40  | \$ 8.00      | \$ 1,440.00  | \$ 8.55      | \$ 1,539.00  |
| 13        | 1.5" Sched 80 PVC Sewer Force Main                                                                                       | 1,210    | LF   | \$ 16.00     | \$ 19,360.00 | \$ 3.10      | \$ 3,751.00  | \$ 7.17      | \$ 8,675.70  | \$ 8.60      | \$ 10,406.00 | \$ 9.25      | \$ 11,192.50 |
| 14        | 2" Sched 80 PVC Sewer Force Main                                                                                         | 1,120    | LF   | \$ 18.00     | \$ 20,160.00 | \$ 4.08      | \$ 4,569.60  | \$ 8.19      | \$ 9,172.80  | \$ 9.10      | \$ 10,192.00 | \$ 9.25      | \$ 10,360.00 |
| 15        | 1.5" HDPE Directional Bored Sewer Force Main (Including all Fittings for Transition)                                     | 185      | LF   | \$ 22.00     | \$ 4,070.00  | \$ 7.27      | \$ 1,344.95  | \$ 16.00     | \$ 2,960.00  | \$ 3.10      | \$ 573.50    | \$ 21.35     | \$ 3,949.75  |
| 16        | 2" HDPE Directional Bored Sewer Force Main (Including all Fittings for Transition)                                       | 120      | LF   | \$ 28.00     | \$ 3,360.00  | \$ 12.84     | \$ 1,540.80  | \$ 25.00     | \$ 3,000.00  | \$ 27.10     | \$ 3,252.00  | \$ 22.80     | \$ 2,736.00  |
| 17        | 10" HDPE Directional Bored Water Main (Including all Fittings for Transition)                                            | 120      | LF   | \$ 100.00    | \$ 12,000.00 | \$ 66.95     | \$ 8,034.00  | \$ 130.00    | \$ 15,600.00 | \$ 104.80    | \$ 12,576.00 | \$ 118.00    | \$ 14,160.00 |
| 18        | Fire Hydrant Assembly (Includes 6" Hydrant Lead, 6" Gate Valve, Box & Pad)                                               | 5        | EA   | \$ 3,500.00  | \$ 17,500.00 | \$ 5,821.76  | \$ 29,108.80 | \$ 3,556.99  | \$ 17,784.95 | \$ 3,924.90  | \$ 19,624.50 | \$ 4,553.50  | \$ 22,767.50 |
| 19        | Ductile Iron Fittings*                                                                                                   | 1,150    | LB   | \$ 6.00      | \$ 6,900.00  | \$ 13.06     | \$ 15,019.00 | \$ 4.24      | \$ 4,876.00  | \$ 3.90      | \$ 4,485.00  | \$ 10.00     | \$ 11,500.00 |
| 20        | 10" x 12" Tapping Sleeve and Valve                                                                                       | 1        | EA   | \$ 2,500.00  | \$ 2,500.00  | \$ 10,117.00 | \$ 10,117.00 | \$ 6,000.00  | \$ 6,000.00  | \$ 5,038.30  | \$ 5,038.30  | \$ 7,542.00  | \$ 7,542.00  |
| 21        | 2" Blow Off Valve (Including Box, etc.)                                                                                  | 1        | EA   | \$ 2,800.00  | \$ 2,800.00  | \$ 1,140.00  | \$ 1,140.00  | \$ 11,000.00 | \$ 11,000.00 | \$ 972.40    | \$ 972.40    | \$ 2,134.45  | \$ 2,134.45  |
| 22        | 1" Single Water Service Assembly (Including Service Tubing, Bore, Saddle, Corp. Stop, Curb Stop, Meter Box, Meter, etc.) | 5        | EA   | \$ 1,500.00  | \$ 7,500.00  | \$ 1,425.00  | \$ 7,125.00  | \$ 4,981.68  | \$ 24,908.40 | \$ 2,392.40  | \$ 11,962.00 | \$ 1,040.00  | \$ 5,200.00  |
| 23        | 1.25" Single Sewer Service Assembly (Including Service Piping, Bore, Tee, Valve, Valve Box, Check Valve, etc.)           | 5        | EA   | \$ 1,800.00  | \$ 9,000.00  | \$ 747.04    | \$ 3,735.20  | \$ 9,000.00  | \$ 45,000.00 | \$ 2,375.10  | \$ 11,875.50 | \$ 1,040.00  | \$ 5,200.00  |
| 24        | Crushed Limestone (#57)*                                                                                                 | 15       | CY   | \$ 90.00     | \$ 1,350.00  | \$ 80.00     | \$ 1,200.00  | \$ 138.00    | \$ 2,070.00  | \$ 95.00     | \$ 1,425.00  | \$ 107.00    | \$ 1,605.00  |
| 25        | Hot Bituminous Pavement (MDOT ST, 9.5 mm mix)(4" Thick)*                                                                 | 80       | SY   | \$ 125.00    | \$ 10,000.00 | \$ 33.75     | \$ 2,700.00  | \$ 35.75     | \$ 2,860.00  | \$ 60.00     | \$ 4,800.00  | \$ 85.40     | \$ 6,832.00  |
| 26        | Geogrid (Model BS1100)*                                                                                                  | 40       | SY   | \$ 5.00      | \$ 200.00    | \$ 15.00     | \$ 600.00    | \$ 9.60      | \$ 384.00    | \$ 8.00      | \$ 320.00    | \$ 17.10     | \$ 684.00    |
| 27        | Silt Fence                                                                                                               | 850      | LF   | \$ 3.50      | \$ 2,975.00  | \$ 1.27      | \$ 1,079.50  | \$ 3.94      | \$ 3,349.00  | \$ 3.50      | \$ 2,975.00  | \$ 6.40      | \$ 5,440.00  |
| 28        | Straw Wattles                                                                                                            | 50       | EA   | \$ 45.00     | \$ 2,250.00  | \$ 5.20      | \$ 260.00    | \$ 8.00      | \$ 400.00    | \$ 5.00      | \$ 250.00    | \$ 43.00     | \$ 2,150.00  |
| 29        | Combination Fertilizer (13-13-13)                                                                                        | 150      | LBS  | \$ 3.00      | \$ 450.00    | \$ 1.33      | \$ 199.50    | \$ 4.77      | \$ 715.50    | \$ 0.80      | \$ 120.00    | \$ 1.15      | \$ 172.50    |
| 30        | Plant Establishment                                                                                                      | 0.3      | AC   | \$ 2,000.00  | \$ 600.00    | \$ 2,500.00  | \$ 750.00    | \$ 4,051.00  | \$ 1,215.30  | \$ 3,500.00  | \$ 1,050.00  | \$ 7,827.00  | \$ 2,348.10  |
| 31        | Solid Sod                                                                                                                | 50       | SY   | \$ 12.00     | \$ 600.00    | \$ 6.00      | \$ 300.00    | \$ 11.92     | \$ 596.00    | \$ 5.00      | \$ 250.00    | \$ 8.55      | \$ 427.50    |
| TOTAL BID |                                                                                                                          |          |      | \$           | 242,450.00   | \$           | 195,425.63   | \$           | 270,824.15   | \$           | 222,359.20   | \$           | 242,508.05   |

= Mathematical errors were found in the bid, and the amount shown shows the corrected amount.

I HAVE REVIEWED THESE BIDS AND HEREBY CERTIFY THAT THEY ARE ACCURATE

DURLON R. BRYANT, PROJECT ENGINEER

# SUGGESTED FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

*Prepared by*

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*a practice division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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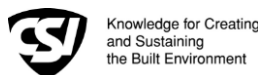
AMERICAN COUNCIL OF ENGINEERING COMPANIES

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AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General Contractors of America



**EJCDC  
SUGGESTED FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR FOR  
CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between CITY OF GAUTIER

(Owner) and HUDSON CONTRACTING, INCORPORATED

(Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

**ARTICLE 1 - WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**ROBINSON STILL ROAD  
WATER AND SEWER  
CITY OF GAUTIER**

**ARTICLE 2 - THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**Construct an underground water and sewer system, along with all appurtenances, along Robinson Still Road in Gautier, MS**

**ARTICLE 3 - ENGINEER**

3.01 The Project has been designed by

Seymour Engineering  
925 Tommy Munro Drive, Suite G  
Biloxi, MS 39532

(Engineer), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.



ARTICLE 4 - CONTRACT TIMES

4.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within 90 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 90 days after the date when the Contract Times commence to run.

4.03 Liquidated Damages - "LIQUIDATED DAMAGES IN THE SUM OF \$250.00 FOR EACH CONSECUTIVE CALENDAR DAY THEREAFTER SHALL BE ASSESSED."

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$250.00 for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$250.00 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

~~A. For all Work other than Unit Price Work, a Lump Sum of: N/A~~

\_\_\_\_\_ (\$\_\_\_\_\_) (words) (numerals)

~~All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.02 of the General Conditions.~~

B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 5.01.B:

As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

| UNIT PRICE WORK |                                      |                                                                                      |                           |                   |  |                            |
|-----------------|--------------------------------------|--------------------------------------------------------------------------------------|---------------------------|-------------------|--|----------------------------|
| <u>Item No.</u> | <u>Description</u>                   | <u>Unit</u>                                                                          | <u>Estimated Quantity</u> | <u>Unit Price</u> |  | <u>Estimated</u>           |
|                 | <b>SEE ATTACHED BID SCHEDULE</b>     |                                                                                      |                           |                   |  |                            |
|                 |                                      |                                                                                      |                           |                   |  |                            |
|                 |                                      |                                                                                      |                           |                   |  |                            |
|                 |                                      |                                                                                      |                           |                   |  |                            |
|                 |                                      |                                                                                      |                           |                   |  |                            |
|                 |                                      |                                                                                      |                           |                   |  |                            |
|                 |                                      |                                                                                      |                           |                   |  |                            |
|                 |                                      |                                                                                      |                           |                   |  |                            |
|                 |                                      |                                                                                      |                           |                   |  |                            |
|                 | <b>TOTAL OF ALL ESTIMATED PRICES</b> | <b>TWO HUNDRED AND SIXTEEN THOUSAND, NINE HUNDRED AND TEN DOLLARS AND ZERO CENTS</b> |                           |                   |  | <b><u>\$210,910.00</u></b> |
|                 |                                      | (words)                                                                              |                           |                   |  | (numerals)                 |

C. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

## ARTICLE 6 - PAYMENT PROCEDURES

### 6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 Progress Payments; Retainage

A. Provided that an Application for Payment is received by the Engineer not later than the 20th day of a month, the Owner shall make payment to the Contractor not later than 45 days. If an application for Payment is received by the Engineer after the application date fixed above, payment shall be made by the Owner not later than 60 days after the Engineer receives the Application for Payment. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:

a. 90% percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95% percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 100% percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

### 6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

## ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 0 percent per annum.

## ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.

E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

K. The Contractor will name Seymour Engineering and the City of Gautier as additional insureds on all general liability insurance provided by this Contractor to complete the scope of work in this Agreement. Contractor shall provide a Waiver of Subrogation to Seymour Engineering and the City of Gautier in respect to workers compensation.

## ARTICLE 9 - CONTRACT DOCUMENTS

### 9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 8, inclusive).
2. Performance bond (pages 1 to 3, inclusive).
3. Payment bond (pages 1 to 3, inclusive).
4. Other bonds (pages \_\_\_\_ to \_\_\_\_, inclusive).
  - a. \_\_\_\_ (pages \_\_\_\_ to \_\_\_\_, inclusive).
  - b. \_\_\_\_ (pages \_\_\_\_ to \_\_\_\_, inclusive).
  - c. \_\_\_\_ (pages \_\_\_\_ to \_\_\_\_, inclusive).
5. General Conditions (pages 1 to 43, inclusive).
6. Supplementary Conditions (pages 1 to 14 inclusive).
7. Specifications as listed in the table of contents of the Project Manual.
8. Drawings consisting of 10 sheets with each sheet bearing the following general title:  
**Robinson Still Road Water and Sewer** (or) the Drawings listed on attached sheet index.
9. Addenda (numbers 1 to 3, inclusive).
10. Exhibits to this Agreement (enumerated as follows):
  - a. Contractor's Bid (pages 1 to 4, inclusive).
  - b. Documentation submitted by Contractor prior to Notice of Award (pages \_\_\_\_ to \_\_\_\_, inclusive).
  - c. \_\_\_\_.
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a. Notice to Proceed (pages 1 to 1 inclusive).
  - b. Work Change Directives.
  - c. Change Order(s).

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## ARTICLE 10 - MISCELLANEOUS

### 10.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### 10.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 10.03 Successors and Assigns

A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 10.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 10.05 Other Provisions

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on \_\_\_\_\_, 2019 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

**THE CITY OF GAUTIER, MISSISSIPPI**

**HUDSON CONTRACTING, INC.**

By: **PAULA YANCEY**

By: \_\_\_\_\_

Title: **CITY MANAGER**

Title: \_\_\_\_\_

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

**THE CITY OF GAUTIER, MISSISSIPPI**

**3330 HIGHWAY 90**

**GAUTIER, MS 39553**

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

License No.: \_\_\_\_\_

(Where applicable)

Agent for service or process: \_\_\_\_\_

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)

Councilman Colledge made the motion to accept bids and authorize the award and execution of a contract with J E Borries, Inc. for the Shepard State Park – Marshwalk Pier Project, as presented, in an amount not to exceed \$389,945.00. Councilman Vaughan seconded the motion. The vote was carried unanimously.

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 249-2019**

**WHEREAS**, the City of Gautier has requested bids for the Shepard State Park Marshwalk Pier Project; and

**WHEREAS**, sealed bids for this project were received from six contractors and were opened on November 6, 2019 at 11:00AM; and

**WHEREAS**, bids were submitted ranging in total amounts from \$389,945.00 to \$870,598.00; and

**WHEREAS**, the lowest and best bidder was J. E. Borries, Inc., with a base bid of \$389,945.00; and

**WHEREAS**, the proper proposal documentation, including bid bond, is in order as required by the contract documents; and

**WHEREAS**, the Heflin Engineering, the project engineer, has tabulated the bids and recommends awarding the contract to J. E. Borries, Inc. in an amount not to exceed \$389,945.00; and

**WHEREAS**, the Mayor and Members of Council find that it is in the best interests of the City to accept bids and authorize the award and execution of the contract with J. E. Borries, Inc. for the Shepard State Park Marshwalk Pier Project in an amount not to exceed \$389,945.00; and

**WHEREAS**, the Mayor and Council Members hereby find that J. E. Borries, Inc. has submitted the lowest and best bid for the base bid and additive alternative; and

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the award and execution of a contract with J. E. Borries, Inc., for the Shepard State Park Marshwalk Pier Project is hereby authorized and approved.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary for this purpose.

Motion was made by **Councilman Colledge**, seconded by **Councilman Vaughan**, and the following vote was recorded:

**AYES:** Phil Torjusen  
Mary Martin  
Richard Jackson  
Casey Vaughan  
Rusty Anderson  
Adam Colledge

**NAYS:** None

**ABSENT:** Cameron George

---

**MAYOR**

**ATTEST:**

---

**CITY CLERK**

**PASSED AND ADOPTED** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of November 19, 2019.



**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** April Stennett, Grants Administrator  
**Date:** 11/12/2019  
**Subject:** Authorization to Acknowledge Bids and Award Contract for Shepard State Park Marshwalk Pier

---

**REQUEST:**

The Grants and Projects Department requests that City Council acknowledge receipt of six bids for the Shepard State Park Marshwalk Pier project and award a contract to the low bidder, J.E. Borries, Inc.

**BACKGROUND:**

This project includes approximately 1000 feet of pedestrian boardwalk within Shepard State Park, along the marsh on the northwest side of the park. The boardwalk will include educational panels and birdwatching opportunities. The goal of this project is to provide innovative public access opportunities to the general public for recreational purposes. The project is being funded through Tidelands.

**DISCUSSION:**

Six bids for this project were received and opened Nov. 6, 2019. The bidders were J.E. Borries, Inc., KR Borries, M & D Construction Co., Coastal Painting and General Contractors, Gray Falcon Construction, and Twin L Construction. The low bidder was J.E. Borries, Inc., with a bid of \$389,945.

Heflin Engineering has checked the bids and recommends approval.

**RECOMMENDATION:**

The Grants and Projects Department recommends that City Council acknowledge receipt of six bids for the Shepard State Park Marshwalk Pier project and award a contract to the low bidder, J.E. Borries, Inc.

The City Council may:

- 1) Acknowledge the bids and award a contract to the low bidder, as presented; or
- 2) Not acknowledge the bids and not award a contract to the low bidder as presented.

**ATTACHMENTS:**

1. Business Agenda Item 2 - Acceptance of Bids and Contracts for Shepard State Park Marshwalk Pier Project
2. Recommendation Letter and Bid Tabulation
3. Contract, General Conditions and Supplementary Conditions

**HEFLIN ENGINEERING, INC.**  
**CONSULTING ENGINEERS**  
**P. O. Box 47**  
**Brandon, Mississippi 39043-0047**  
**601-824-7569**

November 8, 2019

City of Gautier  
3330 Highway 90  
Gautier, MS 39553

ATTN: Ms. April Stennett, Grants and Projects Director

RE: **Recommendation of Award**  
Shepard State Park – Marshwalk Pier

Dear Ms. Stennett:

We are pleased to submit to you our conclusions and recommendations regarding award of the contract for the Shepard State Park – Marshwalk Pier project. Bids were opened at the Gautier City Hall on Wednesday, November 6, 2019 at 11:00 A.M. A copy of the Certified Tabulation of Bids is attached.

Six bids were submitted ranging in total amounts from \$389,945.00 to \$870,598.00. The low Bidder was J.E. Borries, Inc. with a total bid amount of \$389,945.00. The proper proposal documentation, including bid bond, appears to be in order as required by the contract documents.

There were several errors on the bids for the additive/deductive alternate for wood decking in place of light penetrating decking. Those errors and corrections are noted on the certified tabulation of bids. However, these errors do not change the outcome of the low bid in any way. Light penetrating decking (base bid) is superior to wood decking for both maintenance and environmental impact considerations.

Therefore, we recommend that award of the contract for the base bid be made to J.E. Borries, Inc. in the amount of \$389,945.00.

Thank you for this opportunity to be of service to you.

Sincerely,



Austin Moore, P.E.  
Vice President

Attachment

CITY OF GAUTIER  
SHEPARD STATE PARK MARSHWALK PIER

Bid Date: November 6, 2019

Bid Time: 11:00 AM

Bidder:  
Certificate of Responsibility:  
Surety:

J.E. Borries, Inc.  
09360-MC  
US Specialty Ins.

KR Borries  
06123-SC  
US Specialty Ins.

M&D Construction Company  
05107-MC  
Old Republic Surety Company

Coastal Painting & Gen. Contr.  
08092-MC  
RLI Insurance Company

Gray Falcon Construction  
22424-MC  
Aegis Security Ins. Co.

Twin L Construction  
08365-MC  
Endurance Assurance Corp.

| ITEM No.       | Qty  | Unit  | Description                                           | UNIT PRICE  | EXTENSION    | UNIT PRICE   | EXTENSION    | UNIT PRICE   | EXTENSION    | UNIT PRICE   | EXTENSION    | UNIT PRICE   | EXTENSION    | UNIT PRICE   | EXTENSION    |
|----------------|------|-------|-------------------------------------------------------|-------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1              | 1    | LS    | Mobilization, Demobilization                          | \$38,000.00 | \$ 38,000.00 | \$ 15,000.00 | \$ 15,000.00 | \$ 29,375.00 | \$ 29,375.00 | \$ 20,000.00 | \$ 20,000.00 | \$ 42,000.00 | \$ 42,000.00 | \$ 41,925.00 | \$ 41,925.00 |
| 2              | 1    | LS    | Clearing & Grubbing                                   | 12,400.00   | 12,400.00    | 15,000.00    | 15,000.00    | 13,920.00    | 13,920.00    | 20,000.00    | 20,000.00    | 5,000.00     | 5,000.00     | 20,963.00    | 20,963.00    |
| 3              | 238  | EA    | Timber Piles                                          | 500.00      | 119,000.00   | 998.00       | 237,524.00   | 464.00       | 110,432.00   | 290.00       | 69,020.00    | 646.00       | 153,748.00   | 960.00       | 228,480.00   |
| 4              | 1005 | LF    | Boardwalk Substructure                                | 83.00       | 83,415.00    | 81.00        | 81,405.00    | 154.28       | 155,051.40   | 138.00       | 138,690.00   | 204.00       | 205,020.00   | 210.00       | 211,050.00   |
| 5              | 6270 | SF    | Boardwalk Light Penetrating Decking                   | 9.00        | 56,430.00    | 12.00        | 75,240.00    | 12.18        | 76,368.60    | 25.00        | 156,750.00   | 9.00         | 56,430.00    | 28.00        | 175,560.00   |
| 6              | 2040 | LF    | Boardwalk Handrail w/ SS Cabling (1,020 ft each side) | 20.00       | 40,800.00    | 15.50        | 31,620.00    | 45.24        | 92,289.60    | 40.00        | 81,600.00    | 36.00        | 73,440.00    | 63.00        | 128,520.00   |
| 7              | 220  | EA    | Solar Rail Lights                                     | 170.00      | 37,400.00    | 145.00       | 31,900.00    | 174.00       | 38,280.00    | 200.00       | 44,000.00    | 145.00       | 31,900.00    | 280.00       | 61,600.00    |
| 8              | 1    | ALLOW | Interpretive Signage                                  | 2,500.00    | 2,500.00     | 2,500.00     | 2,500.00     | 2,500.00     | 2,500.00     | 2,500.00     | 2,500.00     | 2,500.00     | 2,500.00     | 2,500.00     | 2,500.00     |
| TOTAL BASE BID |      |       |                                                       |             | \$389,945.00 |              | \$490,189.00 |              | \$518,216.60 |              | \$532,560.00 |              | \$570,038.00 |              | \$870,598.00 |

ADDITIVE/DEDUCTIVE ALTERNATE 1 - WOOD DECKING

|                                           |      |    |                                    |          |             |        |           |          |                |         |           |          |             |         |            |
|-------------------------------------------|------|----|------------------------------------|----------|-------------|--------|-----------|----------|----------------|---------|-----------|----------|-------------|---------|------------|
|                                           |      |    | Substitute Wood Decking            |          |             |        |           |          |                |         |           |          |             |         |            |
| 1                                         | 5600 | SF | (#1 Grade, 0.8 CCA, 2x8, S4S) in   |          |             |        |           |          |                |         |           |          |             |         |            |
|                                           |      |    | Place of Light Penetrating Decking | (\$2.70) | (15,120.00) | \$9.95 | 55,720.00 | (\$3.90) | (21,840.00)    | \$15.00 | 84,000.00 | (\$3.60) | (20,160.00) | \$26.00 | 145,600.00 |
| TOTAL ADD (+) OR DEDUCT (-) FROM BASE BID |      |    |                                    |          | (15,120.00) |        | 55,720.00 |          | \$ (21,840.00) |         | 84,000.00 |          | (20,160.00) |         | 145,600.00 |

Corrected due to math errors.



ENGINEER'S CERTIFICATION

I hereby certify that this tabulation is a true and correct representation of all bids submitted.

Austin Moore  
Registered Professional Engineer No.26441  
State of Mississippi

## AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by and between \_\_\_\_\_ City of Gautier \_\_\_\_\_  
hereinafter called "Owner" and \_\_\_\_\_  
doing business as a corporation, partnership or individual, hereinafter called "Contractor".

### W I T N E S S E T H:

That for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor will commence and complete the construction of Shepard State Park – Marshwalk Pier, hereinafter called "Project".
2. The Contractor will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the project described herein.
3. The Contractor will commence the work required by the Contract Documents within 10 calendar days after the date of the Notice to Proceed and will complete the same within 60 calendar days, unless the period for completion is extended otherwise by the Contract Documents.
4. The Contractor agrees to perform all of the work described in the Contract Documents for the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
5. The term "Contract Documents" means and includes the following:
  - a. Advertisement for Bids
  - b. Information for Bidders
  - c. Bid
  - d. Bid Bond
  - e. Agreement
  - f. General Conditions
  - g. Supplemental General Conditions
  - h. Payment Bond
  - i. Performance Bond
  - j. Notice to Proceed
  - k. Change Order
  - l. Notice of Award
  - m. Drawings prepared by Heflin Engineering, Inc. and dated September 2019.
  - n. Specifications prepare or issued by Heflin Engineering, Inc., dated September 2019.
  - o. Addenda:  
No. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_.  
No. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_.

6. The Owner will pay the Contractor in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents.
7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement in 5 copies, each of which shall be deemed an original on the date first above written.

**CONTRACTOR**

**OWNER**

\_\_\_\_\_

City of Gautier  
\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(Please type or print)

Name: \_\_\_\_\_  
(Please type or print)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(S E A L)

(S E A L)

ATTEST: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_  
(Please type or print)

Name: \_\_\_\_\_  
(Please type or print)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

## STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly by



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Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*—The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the

Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*—See Paragraph 11.01 for definition.

17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*—The individual or entity named as such in the Agreement.

20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*—Sections of Division 1 of the Specifications.

22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*—Polychlorinated biphenyls.

31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such

as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands

furnished by Owner which are designated for the use of Contractor.

42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.

47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. *Unit Price Work*—Work to be paid for on the basis of unit prices.

50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials

and equipment into such construction, all as required by the Contract Documents.

51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

### B. Intent of Certain Terms or Adjectives:

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or *terms* of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to *describe* an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

### C. Day:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

### D. Defective:

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents; or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
- c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

### 2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

### 2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

### 2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

### 2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during

performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

#### 2.06 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

#### 2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the *Contract Times*. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it *provides* a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to *form* and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

### ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

#### 3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

#### 3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at *the* time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, *or* code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

#### 3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field *measurements*. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor *discovers* any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving *Discrepancies*:

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions

in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's *written* interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its *consultants*, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other *project* without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the



party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

#### **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

##### **4.01 *Availability of Lands***

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

##### **4.02 *Subsurface and Physical Conditions***

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and

2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

##### **4.03 *Differing Subsurface or Physical Conditions***

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such

condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners,

employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data;

b. locating all Underground Facilities shown or indicated in the Contract Documents;

c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the

existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.05 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the *scope* of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) *secure* or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area *until* after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 – BONDS AND INSURANCE

### 5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

C. 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 it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

### 5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance *companies* that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### 5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified

in the Supplementary Conditions, *certificates* of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, *certificates* of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

C. Failure of Owner to demand such certificates or other evidence of *Contractor's* full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect *Contractor*.

E. The insurance *and* insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

#### 5.04 *Contractor's Insurance*

A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of *or* result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

6. include completed operations coverage:

a. Such insurance shall remain in effect for two years after final payment.

b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

#### 5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability *insurance* as will protect Owner against claims which may arise from operations under the Contract Documents.

#### 5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;

2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing

by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or *Laws* and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or *renewal* refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the

Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

#### 5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, *agents*, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and *Engineer*, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

#### 5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

#### 5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and *maintained* by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or

of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

#### 5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property *insurance* pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

### ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

#### 6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, *methods*, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced *without* written notice to Owner and Engineer except under extraordinary circumstances.

#### 6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform *construction* as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or *protection* of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

#### 6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility *for* all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. *All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.*

#### 6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.



## 6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and

3) it has a proven record of performance and availability of responsive service.

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times; and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,

b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

c) whether incorporation or use of the proposed substitute item in connection

with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services; and

4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, *technique*, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made *pursuant* to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. *Special Guarantee:* Owner may require Contractor to furnish at *Contractor's* expense a special performance guarantee or other surety with respect to any substitute.

E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by *Contractor* pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner

for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

#### 6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date *indicated* for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor

2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The *divisions* and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement *between* Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### 6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the

performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are *applicable* at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### 6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the *Work*. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be

responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in *Contract Price* or *Contract Times*. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

#### 6.10 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and *Regulations* of the place of the Project which are applicable during the performance of the Work.

#### 6.11 Use of Site and Other Areas

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.12 Record Documents

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during *construction*. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

#### 6.13 Safety and Protection

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in *connection* with the Work. Such responsibility does not relieve Subcontractors of their

responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

D. Contractor shall inform Owner and Engineer of the specific *requirements* of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 *Safety Representative*

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and *responsibilities* shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 6.15 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract *Documents* have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to *Engineer* for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

##### 1. *Shop Drawings:*

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria,

materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. Samples:

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with

respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

#### 6.18 *Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

#### 6.19 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

#### 6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage 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 therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A 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 such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

#### **ARTICLE 7 – OTHER WORK AT THE SITE**

##### 7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

##### 7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and



3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

### ARTICLE 8 – OWNER'S RESPONSIBILITIES

#### 8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

#### 8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

#### 8.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

#### 8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

#### 8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties with respect to providing lands and easements and providing engineering surveys to

establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

#### 8.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

#### 8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

#### 8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

#### 8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

#### 8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

#### 8.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

#### 8.12 *Compliance with Safety Program*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

## ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

### 9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

### 9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the

responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

### 9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

### 9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

### 9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

### 9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed

by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

#### 9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

#### 9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or

entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

#### 9.10 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

### ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

#### 10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

#### 10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

#### 10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

#### 10.04 *Notification to Surety*

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable

bond will be adjusted to reflect the effect of any such change.

#### 10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part;

2. approve the Claim; or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **11.01 *Cost of the Work***

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in

which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

## 11.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances:*

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand

for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance:*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be *deemed* to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. *Determinations* of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit *price* will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the *Contract Price* in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

**ARTICLE 12 – CHANGE OF CONTRACT PRICE;  
CHANGE OF CONTRACT TIMES**

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any *Claim* for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be *determined* as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at

whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

#### 12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times *shall* be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

#### 12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a *Claim* is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the

performance or *progress* of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the *fault* of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the *control* of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

### **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

#### 13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or *Engineer* has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

#### 13.02 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's



safety procedures and programs so that they may comply therewith as applicable.

### 13.03 Tests and Inspections

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be *inspected*, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the *Work*; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without *written* concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.

F. Uncovering Work as provided in Paragraph 13.03.E *shall* be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's

intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

### 13.04 Uncovering Work

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be *uncovered* for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, *expose*, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of *repair* or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

### 13.05 Owner May Stop the Work

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or *fails* to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

### 13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not *defective*. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no *action* that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

### 13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not *promptly* comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and

replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of *equipment* is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended *for* an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The *provisions* of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

### 13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to *all* fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

### 13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if

Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such *corrective* or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work *attributable* to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

## ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

### 14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress

payments on account of Unit Price Work will be based on the number of units completed.

### 14.02 *Progress Payments*

#### A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

#### B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due:*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

*D. Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set-off against the amount recommended; or

d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs

14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

#### 14.03 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

#### 14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of *Substantial Completion* which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If,

after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and *usable* part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.07 *Final Payment*

##### A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
- b. consent of the surety, if any, to final payment;
- c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

##### B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

##### C. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

#### 14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if

Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

#### 14.09 *Waiver of Claims*

A. The *making* and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

### ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

#### 15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

#### 15.02 *Owner May Terminate for Cause*

A. The *occurrence* of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's repeated disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a *performance* bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

#### 15.03 Owner May Terminate For Convenience

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other *right* or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of *anticipated* profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 Contractor May Stop Work or Terminate

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer *fails* to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven *days* after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

### ARTICLE 16 – DISPUTE RESOLUTION

#### 16.01 Methods and Procedures

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become



final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
2. agrees with the other party to submit the Claim to another dispute resolution process; or
3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

## ARTICLE 17 – MISCELLANEOUS

### 17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been *validly* given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### 17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period *falls* on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

### 17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with *the* Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

### 17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

### 17.06 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SUPPLEMENTARY CONDITIONS  
OF THE  
CONSTRUCTION CONTRACT

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## **SUPPLEMENTARY CONDITIONS**

### **Prepared for the City of Gautier**

#### **GENERAL**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. C-700, 2007 Edition) and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the same meanings stated below, which are applicable to both the singular and plural thereof.

The Contractor's attention is directed to Division 1, GENERAL REQUIREMENTS, which contains other directions pertinent to the project.

#### **SPECIFIC COMMENTS**

##### **ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**

**SC-1.01.A.19. *Engineer*** -- ADD the following language at the end of the last sentence in Paragraph 1.01.A.19:

Wherever in these Contract Documents the word "Engineer" or "E/A" or "A/E" appears, it shall be understood to mean the Engineer, Heflin Engineering, Inc., and their authorized representatives, acting either directly or indirectly as authorized agents of the Owner.

**SC-1.01.A.29. *Owner*** -- ADD the following language at the end of the last sentence in Paragraph 1.01.A.29:

Whenever in these Contract Documents the word "Owner" appears, it shall be understood to mean the City of Gautier acting by and through their official minutes, and their authorized representatives.

**SC-1.01.A.44. *Substantial Completion*** – AMEND the language in the first sentence of Paragraph 1.01.A.44 to read as follows:

CHANGE the language from “in the opinion of Engineer,” to “in the opinion of the Engineer and Owner,”

##### **ARTICLE 2 – PRELIMINARY MATTERS**

**SC-2.01.B *Evidence of Insurance*** DELETE Paragraphs and 2.01.B in its entirety and INSERT the following in its place:

B. Before any Work at the Site is started, Contractor shall deliver to Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) .which Contractor is required to purchase and maintain in accordance with Article 5.

**SC-2.02 *Copies of Documents*** AMEND the language in the first sentence in Paragraph 2.02.A to read as follows:

CHANGE the language from “up to ten” to “up to three unless otherwise noted in Article 4”.

**SC-2.03 *Commencement of Contract Times; Notice to Proceed*** DELETE the last sentence in its entirety.

**SC-2.06.B *Preconstruction Conference; Designation of Authorized Representative*** AMEND the language in the second sentence in Paragraph 2.06.B to read as follows:

“Contractor’s representative shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of Contractor. Owner’s representative is authorized to act as a liaison with respect to the Project.”

**SC-2.07 Initial Acceptance of Schedules** ADD the following new language at the end of Paragraph 2.07.A.2:

The requirements for specification Section 01300 - Submittals During Construction shall also be met prior to accepting the Schedule of Submittals.

**SC-2.08 Narrative Report Outline** ADD the following new paragraph immediately following Paragraph 2.07:

SC-2.08 A narrative report as outlined in Specification section 01311 shall be required and shall accompany all Payment Applications prior to approval.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

**SC-3.03.A Reporting Discrepancies** Add this sentence to the end of Paragraph 3.03A.1:

1. Even though Contractor is required to notify Engineer as to possible quantity differences, there shall be no price adjustment given to the Contractor as a result of any variation between the estimated quantities and the actual quantities necessary to complete the required work.

**SC-3.03.B Resolving Discrepancies** ADD the following new language at the end of this section:

- c. Whenever the Contract Documents contain contradictions or discrepancies within the document, the most costly means or method shall be applied.

### **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

**SC-4.01.A Availability of Lands** DELETE the last sentence.

**SC-4.01.B Availability of Lands** DELETE this paragraph in its entirety.

**SC-4.02 Subsurface and Physical Conditions** DELETE Paragraph 4.02.A and Paragraph 4.02.B in their entirety and REPLACE 4.02A.1 and 4.02B.1 with the following:

- A.1. Subsurface data known to Owner at the time of considering said project may have changed as a result of weather conditions, regular marine traffic, incidental work within the area, expansion of marsh grasses and submerged aquatic vegetations, etc. Any such change or a combination of change could present different conditions thus have an impact on the quantity of dredge material necessary to complete the required work and comply with all permit requirements.
- B.1. Technical data is advisory only and Contractor is solely responsible for the accuracy of any data used for their field assessment and evaluation of site conditions of required work to be completed.

**SC-4.02.C Site Surveys** ADD the following new paragraph immediately after Paragraph 4.02.B:

- C. *Site Surveys:* Site survey information has been compiled from past records and limited field investigations and although stated with as much accuracy as possible, may contain errors or discrepancies. Contractor shall perform investigations as necessary to accomplish the Work. Any unknown item encountered that impacts the Work shall be handled under Article 4.03.

**SC-4.03.C.1 Possible Price and Times Adjustments** DELETE Paragraph 4.03C Possible Price and Times Adjustments in its entirety and REPLACE with the following:

4.03C. Contractor may only be entitled to an adjustment in price or time due to abnormal weather conditions or other conditions when such claim is validated by Engineer. However, Contractor will not be entitled to increase in price due to any variations in estimated to completed dredge quantities.

**SC-4.04.B.2 Underground Facilities; Not Shown or Indicated** AMEND the language in the second sentence of paragraph 4.04.B.2 to read as follows:

CHANGE the language from “An equitable adjustment shall be made in the Contract Price...” to “An equitable adjustment may be made in the Contract Price...”.

**SC-4.05 Reference Points** AMEND the language in the second sentence of Paragraph 4.05.A to read as follows:

CHANGE the language from “without prior written approval of Owner” to “without prior written approval of Owner and Engineer”.

**SC-4.06 Hazardous Environmental Conditions at Site** DELETE Paragraphs 4.06.A and 4.06.B in their entirety and INSERT the following in their place:

- A. No reports or drawings of hazardous conditions at the site are known to the Owner or Engineer.
- B. Not used.

**SC-4.06.G Hazardous Environmental Conditions at Site** DELETE Paragraphs 4.06.G in its entirety.

**SC-4.07 Site Investigation and Representation** ADD the following new paragraph immediately after Paragraph 4.06:

*SC-4.07 Site Investigation and Representation*

The Contractor acknowledges that he has satisfied himself as to the nature and location of the Work; the general and local conditions, particularly those bearing upon availability of transportation, disposal, handling and storage of materials; availability of labor, water, electric power, and roads; uncertainties of weather, river stages, or similar physical conditions at the site; the conformation and conditions of the ground; the character of equipment and facilities needed preliminary to and during the prosecution of the work; and all other matters which can in any affect the Work or the cost thereof under this Contract. The Contractor further acknowledges subject to conditions in Section 4.02 that he has satisfied himself as to the character, quality, and quantity of surface and subsurface materials and groundwater to be encountered from inspecting the site. Any failure by the Contractor to acquaint himself with all the available information will not relieve him from responsibility for properly estimating the difficulty or cost of successfully performing the Work. Neither the Owner nor the Engineer assumes responsibility for any conclusion or interpretation made by the Contractor.

## **ARTICLE 5 – BONDS AND INSURANCE**

**SC-5.03.B Certificates of Insurance** DELETE Paragraph 5.03.B in its entirety.

**SC-5.03 Certificates of Insurance** ADD the following new paragraph immediately after Paragraph 5.03.E:

- F. The Contractor shall be required to submit a Certificate of Insurance with every pay application; or, no later than every thirty (30) days for the term of Contract. If an approved Certificate of Insurance is not included with the pay application, then it will be considered non-compliant with the Contract Documents and returned to the Contractor.



**SC-5.04 Contractor's Liability Insurance** ADD the following new paragraph immediately after Paragraph 5.04.B:

- C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverages for not less than the following amounts or greater where required by Laws and Regulations:
1. Worker's Compensation, and related coverage under Paragraph 5.04.A.1 and A.2 of the General Conditions:
    - a. Statutory
    - b. Applicable Federal: Statutory (e.g. Longshoreman's)
    - c. Employer's Liability: \$100,000 or Statutory
  2. Contractor's General Liability under Paragraph 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:
    - a. General Aggregate: \$ 1,000,000.00
    - b. Products- Completed \$ 1,000,000.00  
Operations Aggregate
    - c. Personal and Advertising \$ 1,000,000.00  
Injury
    - d. Each Occurrence (Bodily \$ 1,000,000.00  
Injury and Property Damage)
    - e. Property Damage liability insurance will provide Explosion, Collapse and Under-ground coverages where applicable.
    - f. Excess or Umbrella Liability
      - 1) General Aggregate \$ 1,000,000.00
      - 2) Each Occurrence \$ 1,000,000.00
  3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:
    - a. Bodily Injury:

|               |                 |
|---------------|-----------------|
| Each Person   | \$ 1,000,000.00 |
| Each Accident | \$ 1,000,000.00 |
    - b. Property Damage:

|               |                 |
|---------------|-----------------|
| Each Accident | \$ 1,000,000.00 |
|---------------|-----------------|
    - c. Combined Single:

|          |                 |
|----------|-----------------|
| Limit of | \$ 1,000,000.00 |
|----------|-----------------|

4. The Contractual Liability coverage required by Paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following:
  - a. Bodily Injury:

|             |                 |
|-------------|-----------------|
| Each Person | \$ 1,000,000.00 |
|-------------|-----------------|
  - b. Property Damage:

|                  |                 |
|------------------|-----------------|
| Each Accident    | \$ 1,000,000.00 |
| Annual Aggregate | \$ 1,000,000.00 |
5. The list of names, other persons, or entities to be included on the policy as additional insured are as per Paragraph 5.11.

**SC-5.06.A Property Insurance** DELETE Paragraph 5.06.A in its entirety and INSERT the following in its place:

- A. When available, Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof.
  1. This insurance shall:
    - a. include the interests of Owner, Contractor, Subcontractors, Engineer and any other individuals or entities identified herein, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
    - b. in addition to the individuals and entities specified, include additional insured per Paragraph 5.11.
    - c. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
    - d. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
    - e. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
    - f. allow for partial utilization of the Work by Owner;
    - g. include testing and start up; and
    - h. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.
  2. Contractor shall be responsible for any deductible or self-insured retention.

3. The policies of insurance required to be purchased and maintained by Contractor in accordance with this Paragraph SC-5.06.A shall comply with the requirements of paragraph 5.06.C of the General Conditions.

**SC-5.06.B** DELETE this article in its entirety.

**SC-5.06.E** DELETE this Paragraph in its entirety.

**SC-5.07.A Waiver of Rights** DELETE the third and fourth sentences in their entirety.

**SC-5.07.B** DELETE this Paragraph in its entirety.

**SC-5.11 Additional Insured** ADD the following new paragraph immediately after Paragraph 5.10.

SC- 5.11 *Additional Insured*

- A. Where applicable, all insurance policies shall name the Owner and Engineer as herein before defined as additional insured.

## **ARTICLE 6 – CONTRACTOR’S RESPONSIBILITY**

**SC-6.06 Concerning Subcontractor’s, Suppliers, and Others** ADD a new paragraph immediately after Paragraph 6.06.G:

- H. Owner or Engineer may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on Work performed for Contractor by a particular Subcontractor or Supplier.

**SC-6.07.B Patent Fees and Royalties** DELETE this paragraph in its entirety.

**SC-6.12 Record Documents** ADD a new paragraph immediately after Paragraph 6.12.A:

- B. Owner may withhold progress payments until record documents are properly updated. Final payment may not be made until all record documents are accepted in writing by Owner.

**SC-6.17 Shop Drawings and Samples** ADD the following new paragraphs immediately after Paragraph 6.17.E:

- F. Contractor shall furnish required submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than three submittals. Engineer will record Engineer’s time for reviewing subsequent submittals of Shop Drawings, samples or other items requiring approval and Contractor shall reimburse Owner for Engineer’s charges for such time.
- G. In the event that Contractor requests a substitution for a previously approved item, Contractor shall reimburse Owner for Engineer’s charges for such time unless the need for such substitution is beyond the control of Contractor.

**SC-6.19 Contractor’s General Warranty ~~Warranty~~ and Guarantee** ADD the following new paragraph immediately after Paragraph 6.19.C:

- D. Unless additional warranties are included in the technical specifications, the Contractor shall guarantee all Work for a period of one-year following Substantial Completion.

**SC-6.20 Indemnification** DELETE this article in its entirety and INSERT the following in its place:

- A. Contractor shall defend, indemnify and hold harmless Owner and Engineer, their agents, servants, employees, officers, directors, members, partners, successors and assigns from actions, causes, suits, costs, claims, damages, expenses and demands whatsoever in law or in equity, (including but not limited to all fees and charges of engineers, architects, and attorneys and all court or other dispute resolution costs), with

respect to, or on account of, any injury, including bodily injury, disability or death, or damages to property, including loss of the use thereof, in any way attributable to or in connection with performance of the Contractor under this Contract.

#### **ARTICLE 7 – OTHER WORK AT SITE**

**SC-7.04 *Claims Between Contractors*** ADD a new paragraph immediately after Paragraph 7.03:

*SC-7.04 Claims Between Contractors*

- A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or the construction coordinator, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law.
- B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, the construction coordinator and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any other contractor against Owner, Engineer, Engineer's Consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor's performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, or the construction coordinator on account of any such damage or Claim.
- C. If Contractor is delayed at any time in performing or furnishing Work by any act or neglect of another contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Engineer, and construction coordinator for any delay, disruption, interference, or hindrance caused by any other contractor. This paragraph does not prevent recovery from Owner, Engineer, or construction coordinator for activities that are their respective responsibilities.

#### **ARTICLE 8 – OWNER'S RESPONSIBILITIES**

**SC-8.02 *Replacement of Engineer*** AMEND the language of Paragraph 8.02.A to read as follows: INSERT "resignation or" immediately before "termination". DELETE "to whom Contractor makes no reasonable objection,".

**SC-8.11 *Evidence of Financial Arrangements*** Add the following new paragraph immediately after Paragraph 8.11.A:

- B. On request of Contractor prior to the execution of any Change Order involving a significant increase in the Contract Price, Owner shall furnish to Contractor reasonable evidence that adequate financial arrangements have been made by Owner to enable Owner to fulfil the increased financial obligations to be undertaken by Owner as a result of such Change Order.

#### **ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION**

**SC-9.03 *Project Representative*** AMEND the language in the second sentence of Paragraph 9.03.A to read as follows:

DELETE the language "the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in".

**SC-9.07A *Determination for Unit Price Work*** AMEND the language in the first sentence of Paragraph 9.07 to read as follows:

“Engineer will determine the actual quantities and classifications of completed Unit Price Work performed by Contractor.”

**SC-9.08.B *Decisions on Requirements of Contract Documents and Acceptability of Work*** AMEND the language in the first sentence of Paragraph 9.08.B to read as follows:

“Engineer will, with reasonable promptness, render a written recommendation or decision on the issue referred.”

**SC-9.08.B *Decisions on Requirements of Contract Documents and Acceptability of Work*** AMEND the language in the last sentence of Paragraph 9.08.B to read as follows:

“The date of the Engineer’s recommendation / decision shall be the date it is rendered in writing and provided to both parties.”

**SC-9.08.C *Decisions on Requirements of Contract Documents and Acceptability of Work*** DELETE Paragraph 9.08.C in its entirety and INSERT the following in its place:

“Engineers written recommendation or decision on the issue referred is subject to the provision of Paragraph 10.05.”

#### **ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

**C-10.05.A *Engineer’s Decision Required*** DELETE the last sentence of Paragraph 10.05.A.

**SC-10.05.C Item 1, REPLACE “deny” with “recommend denial of”. Item 2, REPLACE “approve” with “recommend approval of”.**

**SC-10.05.E** DELETE Paragraph 10.05.E in its entirety and INSERT the following in its place:

“Owner or Contractor may invoke dispute resolution in Article 16 within 30 days of the engineer’s recommendation of denial or approval.”

#### **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

**SC-11.03.B** Amend the language in the second sentence of Paragraph 11.03.B as follows:

“*Determinations* of actual quantities and classifications of completed Unit Price Work performed by the Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.”

**SC-11.03.D** DELETE Paragraph 11.03.D in its entirety and INSERT the following in its place:

- D. There shall be no increase in price due to a variation in actual dredge quantities from the estimated quantities and any variation shall be the sole responsibility of Contractor in formulation of his bid and shall include any possible variations from estimate.

#### **ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT ITEMS**

No Comment.

#### **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTIONS, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

**SC-13.03.A** ADD the following new sentence immediately after the first sentence of Paragraph 13.03.A:

Timely notice shall be as stated in the appropriate specification and no less than 24 hours prior to scheduling the Work.

## **ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION**

**SC-14.02.A.1 *Application for Payments*** AMEND the language in the first sentence of Paragraph 14.02.A.1 to read as follows:

CHANGE the language from “At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application accompanied by such supporting documentation as is required by the Contract Documents.” to “On or before the 20<sup>th</sup> day of each month, Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed by the 15<sup>th</sup> of that month, accompanied by such supporting documentation as is required by the Contract Documents.”

**SC-14.02.A.3 *Application for Payments*** DELETE Paragraph 14.02.A.3 in its entirety and INSERT the following in its place:

3. The Owner will retain 10% of the amount of each estimate until final completion of the project. On monthly estimates subsequent to the first estimate submitted that includes invoices for stored materials for which payment to the Contractor has been made, there shall be a signed statement that the invoices have been paid by the Contractor.

The statement shall read as follows:

This is to certify that payment has been made for invoiced materials included in previous monthly estimate no. \_\_\_\_\_ thru \_\_\_\_\_.

Signed: \_\_\_\_\_

In the event that such statement is not furnished or the manufacturers or material suppliers notify the Owner in writing that they have not been paid for materials included on previous estimates, the Owner may reduce payment in accordance with Paragraph 14.02.

**SC-14.02.C *Payment Becomes Due*** AMEND the language in the first sentence of Paragraph 14.02.C.1 to read as follows:

CHANGE the language from “Ten days after presentation of the Application for Payment to Owner,” to “Ten days after approval of the Application for Payment by Owner”.

**SC-14.07.C.1 *Payment Becomes Due*** AMEND the language in the first sentence of Paragraph 14.07.C.1 to read as follows:

CHANGE the language from “Thirty days” to “Sixty days”

**SC-14.09.A.1 *Waiver of Claims*** DELETE this article in its entirety.

## **ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

No comment.

**SC-15.02.C Owner May Terminate for Cause** DELETE the second sentence of Paragraph 15.02.C.

**SC-15.02.D** DELETE in its entirety.

**SC-15.02.F** DELETE in its entirety and REPLACE with: “The termination provisions of the Standard General Conditions of the Construction Contract and the Supplementary Conditions of the Construction Contract shall supercede the termination procedures of any performance bond provided under the provisions of paragraph 5.01A.”

#### **ARTICLE 16 – DISPUTE RESOLUTION**

SC-16.01 Delete Paragraph 16.01 in its entirety and insert the following in its place:

SC-16.01 Meet to Confer and Negotiate

- A. Within 30 days of notice of Engineers recommended action under 10.05C3 or 10.05D, Owner or Contractor may give to the other party written notice of intent to submit the Claim to a process of bilateral negotiations as set forth below
- B. Within 30 days of the delivery of such notice, Owner and Contractor shall meet and confer regarding the Claim. A good-faith effort to negotiate resolution shall be made by both parties.
- C. If the negotiations contemplated by Paragraph SC-16.01.B are unsuccessful, management representatives of Owner and Contractor at least one tier above the individuals who met under SC16.01.B shall meet, confer, and negotiate within 30 days of the closure of the unsuccessful negotiations.
- D. If the Claim is not resolved by negotiation, Engineer’s action under Paragraph 10.05C or a denial pursuant to Paragraphs 10.05C3 or 10.05D may be submitted to a court of competent jurisdiction to be determined or the parties may agree to submit the claim to another dispute resolution process
- E. Nothing in this article shall be deemed to prohibit or interfere with the rights of the parties to file a court action where necessary to preserve their rights to proceed with litigation.

#### **ARTICLE 17 – MISCELLANEOUS**

**SC-17.05 Controlling Law** DELETE Paragraph 17.05.A in its entirety and INSERT the following in its place:

- A. The terms and conditions of this Contract shall be construed and interpreted under, and all respective rights and duties shall be governed by, the laws of the State of Mississippi. Wherever applicable, each provision of these Contract Documents shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of these Contract Documents shall be prohibited by or invalid under applicable law, such provisions shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of these Contract Documents.
- B. This Contract shall not be construed more strictly against one party than the other merely by virtue of the fact that it may have been prepared by one of the parties.

Councilman Colledge made the motion to approve a Special Exception Permit recommended by the Planning Commission, as presented, that would allow a Mobile Home in a C-3, Highway Commercial Zoning District (GPC 19-19-SE) with the following specific conditions: 25' rear setback, a 50' front setback, and a 20' side setback for the primary structure and a 10' side setback and a 5' rear setback on accessory structures. Councilwoman Martin seconded the motion. The vote was carried unanimously.

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 250-2019**

**CITY OF GAUTIER  
SPECIAL EXCEPTION PERMIT  
GPC CASE NO. 19-19-SE  
5401 CAMPBELL ROAD – MOBILE HOME IN A C-3, HIGHWAY  
COMMERCIAL ZONING DISTRICT  
REGARDING PARCEL ID NO: 85298055.000**

**WHEREAS**, an application for a Special Exception Permit that would allow for a Mobile Home in a C-3, Highway Commercial Zoning District was submitted by John W. Mallet, Jr.; and

**WHEREAS**, the parcel subject to this Permit is located at 5401 Campbell Road in Gautier, Mississippi; and

**WHEREAS**, after due public notice, Planning Commission, at its November 7, 2019 meeting, held a public hearing on this matter; and

**WHEREAS**, the Planning Commission considered testimony and exhibits presented by the applicant, the report of the City Staff and all relevant evidence, and recommended approval of such a permit; and

**WHEREAS**, the City Council has considered testimony and exhibits presented by the applicant, the report of the City Staff, and all relevant evidence, in addition to the favorable recommendation from Planning Commission; and

**WHEREAS**, the City Council hereby finds that the proposed Special Exception will be in harmony with the purpose and intent of the Unified Development Ordinance; and will not be injurious to the neighborhood or the general welfare; and

**WHEREAS**, the City Council hereby finds that the proposed Special Exception is consistent with the character of the immediate vicinity of the proposed use; and

**WHEREAS**, the City Council hereby finds that all relevant criteria in the Unified Development Ordinance have been met to approve a Special Exception Permit; and

**WHEREAS**, the City Council hereby finds that the proposed use, classified as a Mobile Home, requires a Special Exception Permit in the C-3 Highway Zoning District.



**IT IS THEREFORE ORDERED** that the Mayor and City Council accepts the recommendation of the Planning Commission and approves the application submitted by John W. Mallett on November 7, 2019 for a Special Exception Permit

**IT IS FURTHER ORDERED** that the specific conditions required for the permit to be issued are as follows: a 25' rear setback, a 50' front setback and a 20' side setback for the primary structure and a 10' side setback and a 5' rear setback on accessory structures.

**IT IS FURTHER ORDERED** that the Planning Department shall have this permit on file and provide the applicant a copy of the permit.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary.

Motion was made by **Councilman Colledge**, seconded by **Councilwoman Martin**, and the following vote was recorded:

**AYES:**        **Phil Torjusen**  
                 **Mary Martin**  
                 **Richard Jackson**  
                 **Casey Vaughan**  
                 **Rusty Anderson**  
                 **Adam Colledge**

**NAYS:**        **None**

**ABSENT:**     **Cameron George**

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**MAYOR**

**ATTEST:**

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**CITY CLERK**

**Passed and Adopted** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of November 19, 2019.

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** Babs Logan, Planning Technician  
**Date:** 11/13/2019  
**Subject:** Consider Special Exception for Mobile Home in a C-3 (GPC 19-19-SE)

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**REQUEST:**

The Planning Department has received a request from John W. Mallett, Jr. for a Special Exception Permit that would allow a Mobile Home in a C-3, Highway Commercial Zoning District, at 5401 Campbell Road, PID#85298055.000. The application fee of \$250 was paid on September 17, 2019. All public notice requirements have been met.

**BACKGROUND:**

The request property is zoned C-3 Highway Commercial.

Location: 5401 Campbell Road (See Exhibit A)

General features of the proposed project:

Mobile Home: 28' x 66' (1848 square feet)

Site Size: .30 Acres

Potable Water and Wastewater Services: Existing from City

Current Zoning (See Exhibit B): C-3 Highway Commercial.

Current Surrounding Zoning (See Exhibit B): C-3 Highway Commercial, and AG Agricultural.

Current Surrounding Existing Land Use (See Exhibit C): Mobile Home and Vacant.

Comprehensive Plan Future Land Use Designation (See Exhibit D): Regional Scale Commercial

**DISCUSSION:**

The following addresses the review criteria for a Special Exception outlined in Section 4.16.4 of the UDO.

Explain how a literal interpretation of the City of Gautier's Unified Development Ordinance would deprive the applicant of rights commonly enjoyed by others of the district in which the property is located, and would work unnecessary hardship upon the applicant?

Applicant: Due to this area with other mobile homes in this area, I see no problem with me moving my mobile home on this property to be close to my family and raise a family of my own. This has been a wish of my stepdad for thirty years. His two other sons are right behind him. We are a very close family and want to keep it that way. Family is the key to success. I will make this property beautiful.

Staff Finding: This area was annexed into the City in 2002. Prior to the annexation, this area was zoned Agricultural. The applicant states that the property was bought prior to the zoning change and that it was bought with the intent to place a mobile home on it for family use at a later date. There are other mobile homes in the immediate vicinity and no businesses in that area. Staff finds that denying the proposed use would deprive the applicant of the rights commonly enjoyed by others in the area.

Explain how the requested Special Exception will be in harmony with the purpose of the City of Gautier's Unified Development Ordinance and will not be injurious to the neighborhood or the general welfare?

Applicant Response: We are right in sync with that area. There are other mobile homes in the area already. The neighbors do not have a problem with mobile homes in the area. There was a mobile home on this property since 1958, so I see no problem with it.

Staff Finding: There are currently mobile homes in the immediate vicinity of the proposed site of the Special Exception. Staff's opinion is that approval of the request will not negatively affect the neighborhood.

Explain how the special circumstances requiring the proposed Special Exception are not results of actions of the applicant.

Applicant Response: When these plans were made years ago this land was county. Then it was annexed. My stepdad has had a vision to let his sons live there. He married my mom and gave me this property so I can raise my two sons and be close to my mother.

Staff Finding: There is no evidence to indicate that special circumstances requiring the Special Exception were results of the action of the applicant. Staff finds that the Special Exception will not negatively affect the surrounding area, or cause a detriment to the surrounding properties.

#### DETERMINATION OF APPLICABLE LAW:

The UDO defines a Special Exception as a relaxation of the terms of the Unified Development Ordinance where such an exception will not be contrary to the public interest, and where, owing to conditions peculiar to the property, a literal enforcement of the ordinance would result in undue hardship. Special Exceptions are necessary when an applicant seeks to establish or expand a use not ordinarily permitted in a specific zoning district. "Special Exceptions" are not transferable from one (1) owner of land to another.

Special Exception requires a public hearing before the Planning Commission and approval by the City Council (Section 4.14 of the UDO).

Once an application for a Special Exception is submitted to the Planning Department, the procedures outlined in UDO Section 4.14.1 will be followed. At the appropriate time, The Planning Commission will conduct a public hearing to determine whether the applicant meets all relevant criteria, and make a recommendation to City Council pursuant to UDO Section 4.14.4. City Council, pursuant to UDO Section 4.14.4(C), will then consider the matter at its next regularly scheduled meeting and approve or deny the Special Exception.

A Special Exception is required for uses not ordinarily permitted in a specific zoning district. Special Exceptions are not permitted by right, and may only be granted when certain criteria are established. (4.16.4) Special Exceptions do not run with the land, and may be revoked by the Planning Department if any of the following circumstances are discovered:

The property changes ownership

The property is being utilized in a manner not permitted under the zoning regulations or the special exception;

or

The property ceases to be used for the purpose allowed in the Special Exception for a period of one hundred eighty (180) days during the existence of the Special Exception.

**RECOMMENDATION:**

The Planning Commission finds that the Special Exception proposed use will be compatible and harmonious with the area and recommends approval with the following conditions: require a 25' rear setback, a 50' front setback and a 20' side setback and at least a 5' rear setback on accessory structures.

The Council may:

Approve the Special Exception;  
Approve the Special Exception with changes; or  
Deny the Special Exception.

**ATTACHMENTS:**

1. Combined 19-19-SE
2. Excerpt GPC Meeting 11.7.19

**Gautier Planning Commission**

**Regular Meeting Agenda**

**November 7, 2019**

**GPC #19-19-SE**

**John W. Mallett, Jr.**

**5401 Campbell Road**

**VII. NEW BUSINESS**

1. Request by John W. Mallett, Jr. for a SPECIAL EXCEPTION PERMIT to place a mobile home at 5401 Campbell Road PID# 85298055.000 located in a C-3, Highway Commercial, Zoning District (GPC CASE #19-19-SE)

## **GAUTIER PUBLIC HEARING PROCESS (PLANNING COMMISSION)**

Planning Commission Chairman to follow procedure below. All questions/comments to be directed to the Council and not to applicant, staff, or other attendees of the meeting.

1. Chairman announces the case.
2. Chairman makes statement, "This is a Public Hearing and all statements to be made need to be true and accurate for the record."
3. Staff gives brief overview of case.
4. Applicant presents their case.
5. Anyone to speak in support of the Request? Please state your name and address for the record.
6. Anyone to speak in opposition of the Request? Please state your name and address for the record.
7. Any final comments from the applicant?
8. Questions from Commission?
9. Chairman closes public hearing – "This closes the Public Hearing portion of this case" bang of gavel
10. Motion/Deliberation/Vote

## **CITY OF GAUTIER STAFF REPORT**

**To:** Chairman and Members, Planning Commission

**From:** Scott Ankerson, Planning Director

**Date:** October 8, 2019

**Subject:** Special Exception Permit for Placement of a Mobile Home at 5401 Campbell Road, PID #85298055.000 in a C-3 Highway Commercial District (GPC Case No. 19-19-SE)

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### **REQUEST:**

The Planning Department has received a request from John W. Mallett, Jr. for a Special Exception Permit that would allow a Mobile Home in a C-3, Highway Commercial Zoning District, at 5401 Campbell Road, PID#85298055.000. The application fee of \$250 was paid on September 17, 2019. All public notice requirements have been met.

### **BACKGROUND:**

The request property is zoned C-3 Highway Commercial.

1. Location: 5401 Campbell Road (See Exhibit A)
2. General features of the proposed project:  
Mobile Home: 28' x 66' (1848 square feet)  
Site Size: .30 Acres
3. Potable Water and Wastewater Services: Existing from City
4. Current Zoning (See Exhibit B): C-3 Highway Commercial.
5. Current Surrounding Zoning (See Exhibit B): C-3 Highway Commercial, and AG Agricultural.
6. Current Surrounding Existing Land Use (See Exhibit C): Mobile Home and Vacant.
7. Comprehensive Plan Future Land Use Designation (See Exhibit D): Regional Scale Commercial

## **DISCUSSION:**

The following addresses the review criteria for a Special Exception outlined in Section 4.16.4 of the UDO.

1. Explain how a literal interpretation of the City of Gautier's Unified Development Ordinance would deprive the applicant of rights commonly enjoyed by others of the district in which the property is located, and would work unnecessary hardship upon the applicant?

*Applicant: Due to this area with other mobile homes in this area, I see no problem with me moving my mobile home on this property to be close to my family and raise a family of my own. This has been a wish of my stepdad for thirty years. His two other sons are right behind him. We are a very close family and want to keep it that way. Family is the key to success. I will make this property beautiful.*

*Staff Finding: This area was annexed into the City in 2002. Prior to the annexation, this area was zoned Agricultural. The applicant states that the property was bought prior to the zoning change and that it was bought with the intent to place a mobile home on it for family use at a later date. There are other mobile homes in the immediate vicinity and no businesses in that area. Staff finds that denying the proposed use would deprive the applicant of the rights commonly enjoyed by others in the area.*

2. Explain how the requested Special Exception will be in harmony with the purpose of the City of Gautier's Unified Development Ordinance and will not be injurious to the neighborhood or the general welfare?

*Applicant Response: We are right in sync with that area. There are other mobile homes in the area already. The neighbors do not have a problem with mobile homes in the area. There was a mobile home on this property since 1958, so I see no problem with it.*

*Staff Finding: There are currently mobile homes in the immediate vicinity of the proposed site of the Special Exception. Staff's opinion is that approval of the request will not negatively affect the neighborhood.*

3. Explain how the special circumstances requiring the proposed Special Exception are not results of actions of the applicant.



*Applicant Response: When these plans were made years ago this land was county. Then it was annexed. My stepdad has had a vision to let his sons live there. He married my mom and gave me this property so I can raise my two sons and be close to my mother.*

*Staff Finding: There is no evidence to indicate that special circumstances requiring the Special Exception were results of the action of the applicant. Staff finds that the Special Exception will not negatively affect the surrounding area, or cause a detriment to the surrounding properties.*

#### **DETERMINATION OF APPLICABLE LAW:**

1. The UDO defines a Special Exception as a relaxation of the terms of the Unified Development Ordinance where such an exception will not be contrary to the public interest, and where, owing to conditions peculiar to the property, a literal enforcement of the ordinance would result in undue hardship. Special Exceptions are necessary when an applicant seeks to establish or expand a use not ordinarily permitted in a specific zoning district. "Special Exceptions" are not transferable from one (1) owner of land to another.
2. Special Exception requires a public hearing before the Planning Commission and approval by the City Council (Section 4.14 of the UDO).
3. Once an application for a Special Exception is submitted to the Planning Department, the procedures outlined in UDO Section 4.14.1 will be followed. At the appropriate time, The Planning Commission will conduct a public hearing to determine whether the applicant meets all relevant criteria, and make a recommendation to City Council pursuant to UDO Section 4.14.4. City Council, pursuant to UDO Section 4.14.4(C), will then consider the matter at its next regularly scheduled meeting and approve or deny the Special Exception.
4. A Special Exception is required for uses not ordinarily permitted in a specific zoning district. Special Exceptions are not permitted by right, and may only be granted when certain criteria are established. (4.16.4)
5. Special Exceptions do not run with the land, and may be revoked by the Planning Department if any of the following circumstances are discovered:
  - A. The property changes ownership
  - B. The property is being utilized in a manner not permitted under the zoning regulations or the special exception; or
  - C. The property ceases to be used for the purpose allowed in the Special

Exception for a period of one hundred eighty (180) days during the existence of the Special Exception.

**RECOMMENDATION & CONCLUSION:**

Staff finds that the Special Exception proposed use will be compatible and harmonious with the area and recommends approval with no specific proposed conditions.

The Planning Commission may:

1. Recommend that City Council approve the Special Exception;
2. Recommend that City Council approve the Special Exception with changes; or
3. Recommend that City Council deny the Special Exception.

**ATTACHMENTS:**

1. Applicant's Exhibit 1 – Application
2. City's Exhibit A – Location Map
3. City's Exhibit B – Existing Zoning Map
4. City's Exhibit C – Existing Land Use Map
5. City's Exhibit D – Future Land Use Map

PLANNING DEPARTMENT  
GAUTIER, MISSISSIPPI

SPECIAL EXCEPTION HEARING APPLICATION

Hearing Number

19-19-SE

**TYPE OF REQUEST:**

Special Exception

**FEE:**

\$250.00

**Special Exception**— These uses are not allowed by right, and **require** a recommendation by the Planning Commission and approval of the City Council.

Name of Applicant: John W Mallett Jr

Name of Business: \_\_\_\_\_

Address: 5401 Campbell rd Mailing Address (if different): 5400 Campbell rd

Email: PID 85298055.000

Address: \_\_\_\_\_

Phone: 228-217-1386

Cell Phone: \_\_\_\_\_

Reason for request, location and intended use of Property: Homestead I want to get  
raise my children there make it a home. 5401 Campbell rd

ATTACHMENTS REQUIRED AS APPLICABLE:

- ☒ 1. Diagram of intended use, showing dimensions and distances of property, building with setbacks, parking spaces, entrances and exits.
- ☒ 2. Legal descriptions and street address.
- ☒ 3. A detailed project narrative that also addresses the questions on the "Criteria for Approval" page of this application.
- N/A 4. Copy of protective covenants or deed restrictions, if any.
- N/A 5. Copies of approvals, or requests for approval, from other agencies, such as, but not limited to, the Mississippi State Department of Health, U.S. Army Corp of Engineers, Mississippi Department of Environmental Quality and Department of Marine Resources.
- N/A 6. Any other information requested by the Planning Director and/or members of the Technical Review Committee.
- N/A ☒ Owner's Consent form, if anyone other than 100% sole owner makes application (see attached).

Signature of Applicant: John Mallett

FOR OFFICE USE ONLY

Date Received 9-17-19 Verify as Complete BR (45A)

Fee Amount Received 250.00

Initials of Employee Receiving Application BR

## **SPECIAL EXCEPTION**

### **Criteria for Approval Special Exception**

- A. Explain how a literal interpretation of the City of Gautier's Unified Development Ordinance would deprive the applicant of rights commonly enjoyed by others of the district in which the property is located, and would work unnecessary hardship upon the applicant?
- B. Explain how the requested Special Exception will be in harmony with the purpose and intent of the City of Gautier's Unified Development Ordinance and will not be injurious to the neighborhood or the general welfare?
- C. Explain how the special circumstances requiring the proposed Special Exception are not results of actions of the applicant?

## **EXCERPT FROM GAUTIER'S UNIFIED DEVELOPMENT ORDINANCE CONCERNING SPECIAL EXCEPTIONS**

### **SECTION 4.16: Special Exception**

A request for a Special Exception may be initiated by the owner or agent of the owner provided that said property has not been denied a previous request for a Special Exception for the same property or portion of property within the past twelve (12) months.

#### **4.16.1 Application for Special Exception**

Applications for a Special Exception may be filed on the appropriate application available from the Planning Department and shall include all requested information, attachments, and submittals.

#### **4.16.2 Procedure**

Once an application for a Special Exception is submitted to the Planning Department, the procedures outlined in UDO Section 4.14.1 will be followed. At the appropriate time, The Planning Commission will conduct a public hearing to determine whether the applicant meets all relevant criteria outlined below, and make a recommendation to City Council pursuant to UDO Section 4.14.4 (A and B). City Council, pursuant to UDO Section 4.14.4(C), will then consider the matter at its next regularly scheduled meeting and approve or deny the Special Exception.

#### **4.16.3 Notice of Public Hearing**

Notice of the public hearing for the Special Exception shall be made in a newspaper of regular and general circulation in the city at least fifteen (15) days prior to the public hearing, and a notice shall be posted at City Hall and the effected property for the benefit of the public. Additionally, all adjoining property owners shall be notified by first class mail in accordance with UDO Section 4.14.3.

#### **4.16.4 Criteria for Approval**

A Special Exception is required for uses not ordinarily permitted in a specific zoning district. Special Exceptions are not permitted by right, and may only be granted when the following criteria are established:

- A. That a literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by others of the district in which the property is located, and that interpretation of this ordinance would work unnecessary hardship upon the applicant;
- B. That the requested Special Exception will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or the general welfare; and
- C. That the special circumstances are not the result of actions of the applicant.

#### **4.16.5 Limitations and Restrictions**

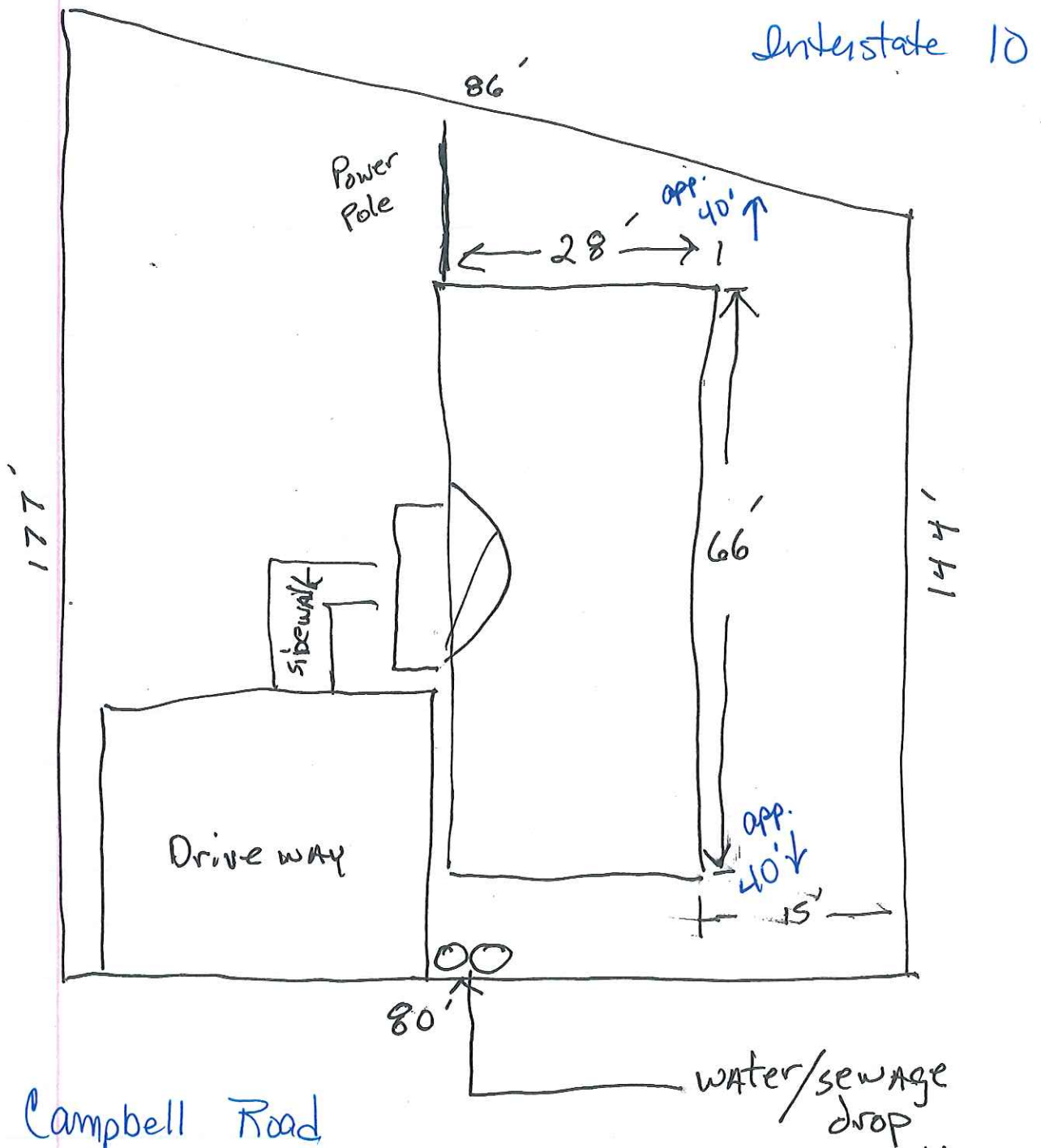
Special Exceptions do not run with the land, and may be revoked by the Planning Department if any of the following circumstances are discovered:

- A. The property changes ownership;
- B. The property is being utilized in a manner not permitted under the zoning regulations or the special exception; or
- C. The property ceases to be used for the purpose allowed in the Special Exception for a period of one hundred eighty (180) consecutive days during the existence of the Special Exception.

A. Due to this area with other mobile homes in this area, I see no problem with me moving my mobile home on this property, to be close to my family and raise a family of my own. This has been a wish of my stepdad for thirty years. His two other sons are right behind him, we are a very close family and want to keep it that way. Family is the key to success. I will make this property beautiful.

B. We are right in line with the area. There are other mobile homes in the area already. The neighbors do not have a problem with mobile homes in the area. There was a mobile home on this property since 1988 so I see no problem with it.

C. When these plans were made years ago this land was county. Then it was annexed. My stepdad has ~~planned on~~ had a vision to let his sons live there, he married my mom and gave me this property so I can raise my two sons, and be close to my mother.



Campbell Road

Proposed

water/sewage drop

Are Existing  
Are All ready  
there

OFFICIAL RECORDS JACKSON COUNTY  
Josh Eldridge  
CHANCERY CLERK  
RECORDING FEE: \$12.00  
#201920581 BK: 1948 PG: 279-281  
09/06/2019 11:41:02 AM 3 PGS  
CSHOWS,DC Rpt#19776



201920581 3 PGS

**PREPARED BY:**

ROBERT E. O'DELL  
ATTORNEY AT LAW, PLLC  
P.O. BOX 5206  
VANCLEAVE, MS 39565  
(228) 826-1555

**RETURN TO:**

John W. Mallett  
5400 Campbell Rd.  
Ocean Springs, MS  
39564

**INDEXING INSTRUCTIONS:**

E ½ of NE ¼ of NE ¼ of  
Sec. 17, T7S, R7W  
Jackson County, MS

STATE OF MISSISSIPPI

COUNTY OF JACKSON

**SPECIAL WARRANTY DEED**

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, I,

**DOUGLAS ALLEN PRIDDY**

5400 Campbell Road  
Ocean Springs, MS 39564  
(228) 365-4240

, do hereby sell, convey, bargain and specially warrant unto:

**JOHN W. MALLET, JR.**

5400 Campbell Road  
Ocean Springs, MS 39564  
(228) 217-1386

all of my rights, title, and interest in the following described property, together with all improvements thereon, the same being located and situated in Jackson County, Mississippi, and being more particularly described as follows, to wit;

I



That certain tract of land situated in the East one-half (E1/2) of the Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of Section 17, Township 7 south, Range 7 West; commencing at the Southwest corner of Tract #41, being more fully described as the East one-half (E1/2) of the Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of Section 17, Township 7 south, Range 7 West according to the H.A. Campbell survey; thence run East eighty (80) feet; thence run North one hundred forty-four (144) feet to the South margin of land previously conveyed to Mississippi State Highway Department for Interstate Highway 10; thence run Northwesterly along the South margin of said Interstate 10 a distance of eighty-six (86) feet, more or less, to the Western boundary of said Tract #41; thence run South along the Western boundary of said Tract #41 a distance of one hundred seventy-seven (177) feet to the point of beginning.

Being the same property recorded in Deed Book 1889, at Pages 11-12, filed in the Land Records of Jackson County, Mississippi.

The above described property is no part of the homestead of the Grantor.

This conveyance is subject to all restrictions, easements and reservations incidental with said property on file and of record in the Office of the Chancery Clerk of Jackson County, Mississippi.

WITNESS the signature of the Grantor herein on this the 5<sup>th</sup> day of September, A.D., 2019.

  
DOUGLAS ALLEN PRIDDY  
Grantor

TITLE NOT EXAMINED

STATE OF MISSISSIPPI  
COUNTY OF JACKSON

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the above mentioned State and County, **DOUGLAS ALLEN PRIDDY**, Grantor, who acknowledged that he signed and delivered the above and foregoing Special Warranty Deed as his true and voluntary act and deed.

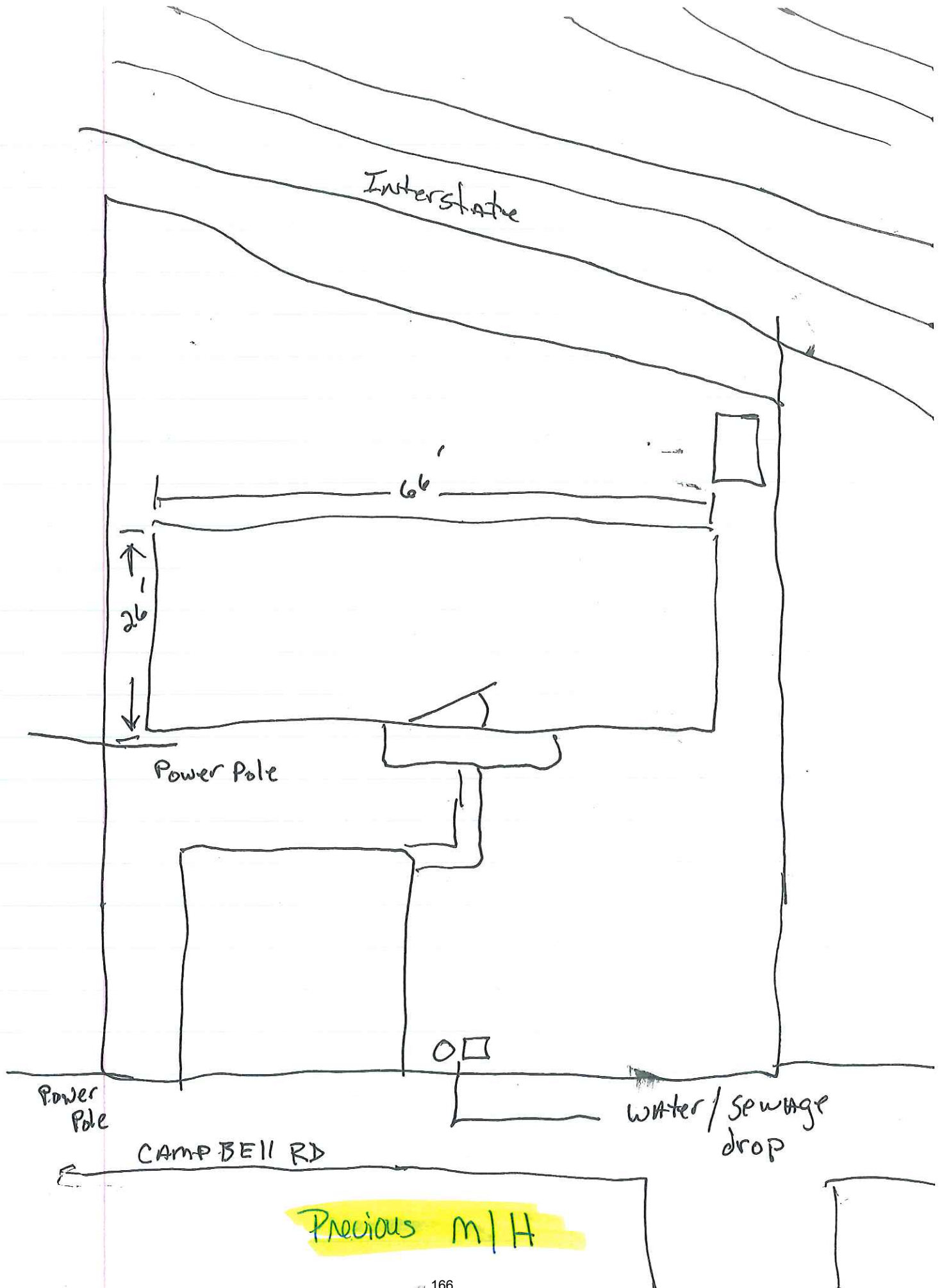
GIVEN UNDER MY HAND and official seal of office on this, the 5<sup>th</sup> day of September, A.D., 2019.

  
\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:



I wish to place this trailer on this lot, 5400 Campbell rd, which I received from <sup>my</sup> mother AND stepdad. This property is my future home, to raise my kids on, to perform work on AND to get me started in life, I have plans on maintaining it to high standards, to the conditions that the city has given me. It will also for me AND my family to stay close together because family means a lot to me, I am a shipbuilder, father, son AND will be a value member of this community.





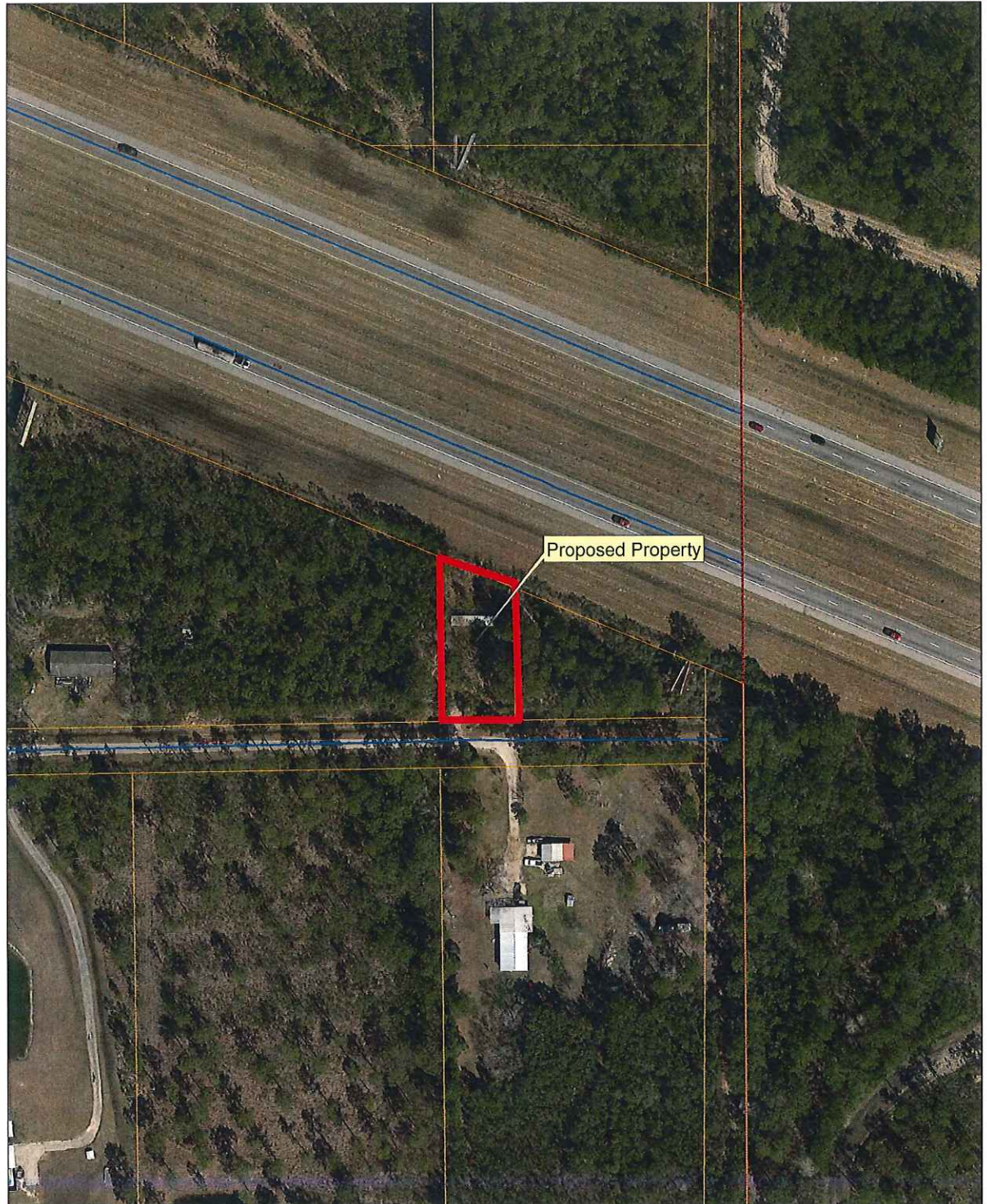
# EXHIBIT A

## LOCATION MAP

Prepared by:  
City of Gautier  
Planning Department

### Legend

- Gautier\_Parcels\_Clip
- GAUTIER\_CITYLIMITS
- Centerlines\_Clip





# EXHIBIT B

## ZONING MAP

Prepared by:  
City of Gautier  
Planning Department

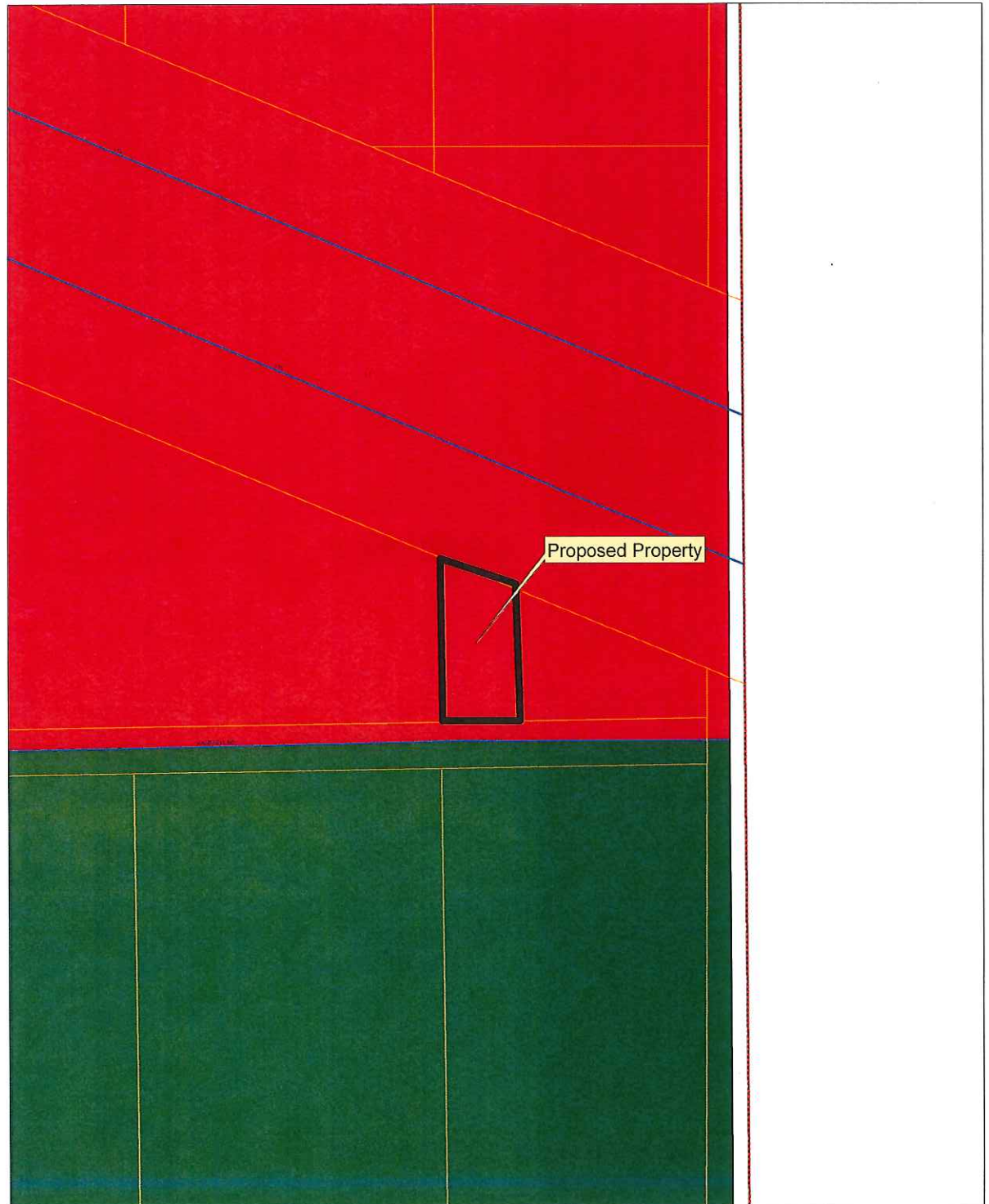
### Legend

-  Gautier\_Parcels\_Clip
-  GAUTIER\_CITYLIMITS
-  Centerlines\_Clip

### Zoning

#### ZONECODE

-  AG
-  C-1
-  C-2
-  C-3
-  I-2
-  MURC-1
-  MURC-2
-  MURC-MW
-  PL
-  PUD
-  R-1
-  R-2
-  R-3
-  RE
-  TC



## EXHIBIT C

# EXISTING LAND USE MAP

Prepared by:  
City of Gautier  
Planning Department

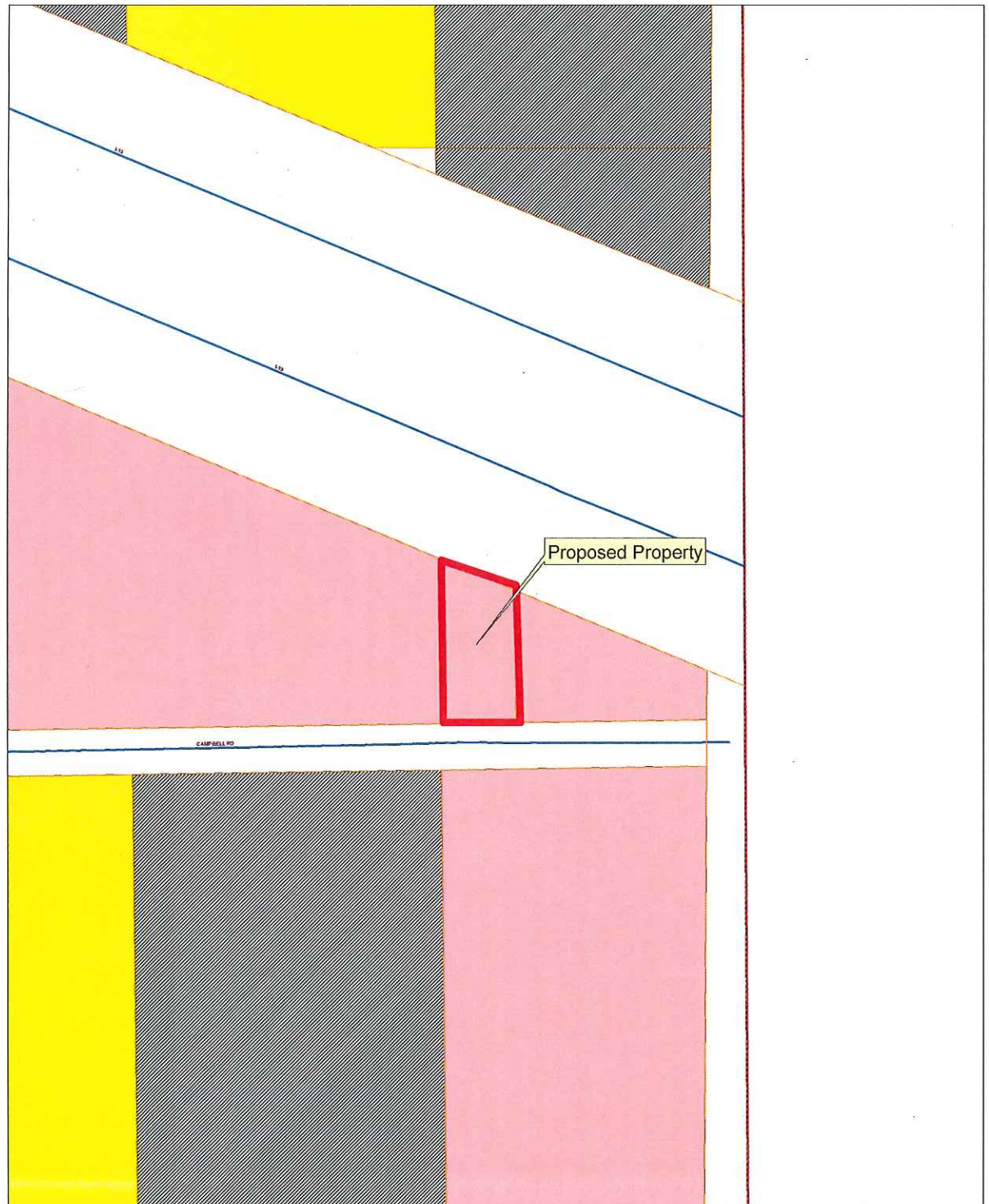
### Legend

-  Gautier\_Parcels\_Clip
-  GAUTIER\_CITYLIMITS
-  Centerlines\_Clip

### EXISTING LAND USE

#### ELU\_08

-  commercial-retail
-  conservation
-  civic
-  industrial
-  marina/fish camps
-  high density residential
-  mobile home
-  mobile home park
-  medium density residential
-  office
-  recreation
-  very low to low density residential
-  utility
-  vacant



## EXHIBIT D

# FUTURE LAND USE MAP

Prepared by:  
City of Gautier  
Planning Department

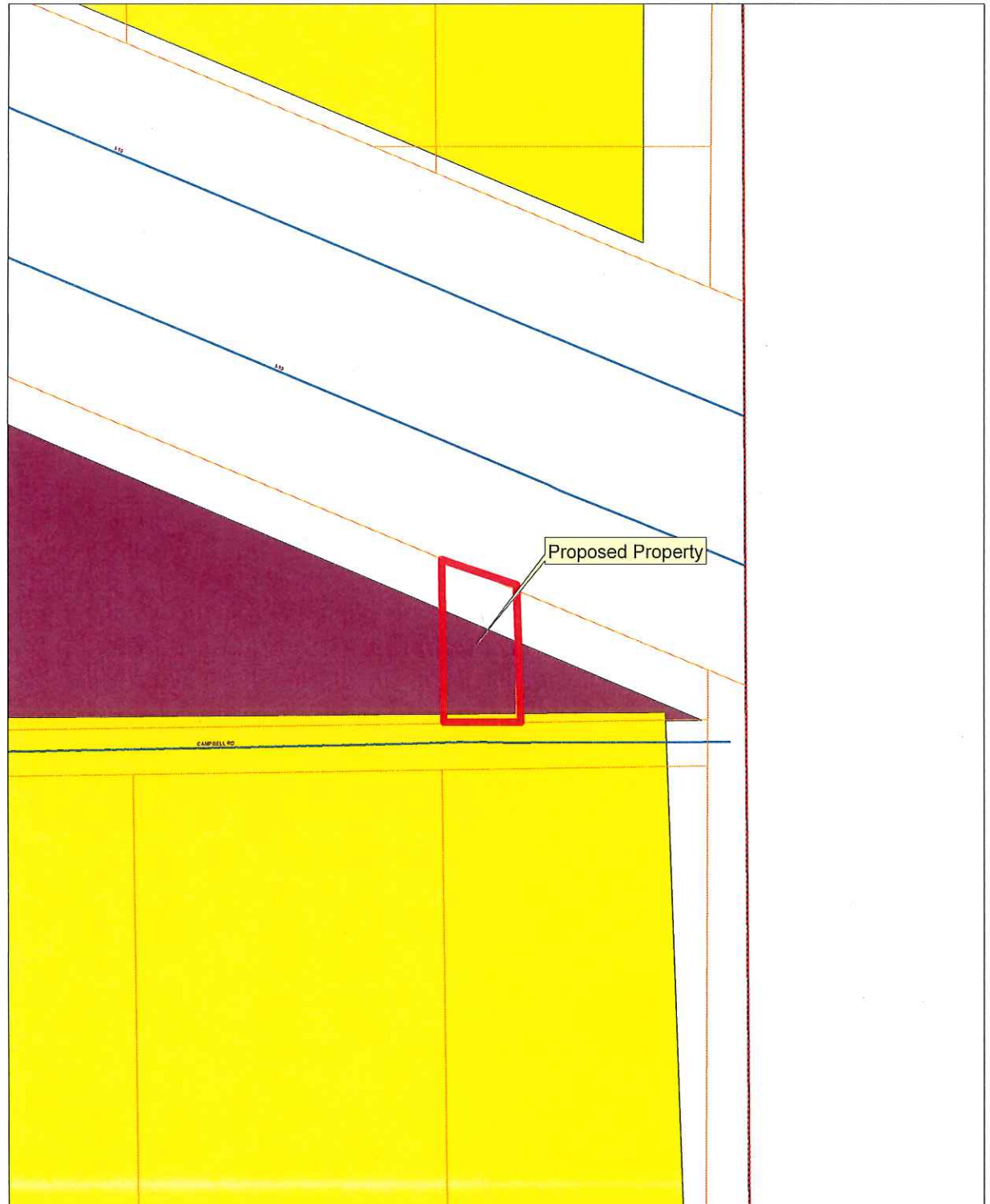
### Legend

-  Gautier\_Parcels\_Clip
-  GAUTIER\_CITYLIMITS
-  Centerlines\_Clip

### FUTURE LAND USE

#### FLU\_Class

- 
-  Civic
-  high impact commercial
-  Conservation
-  High Density Residential
-  Industrial
-  Low Density Residential
-  Medium Density Residential
-  Mobile Home Residential
-  low impact Commercial
-  Recreational
-  recreational commercial
-  Regional Scale Commercial
-  mixed use residential
-  Town Center
-  Very Low Density Residential





### **Excerpt from November 7, 2019 Planning Commission Meeting:**

The Planning Department has received a request from John W. Mallett, Jr. for a Special Exception that would allow a mobile home in a C-3 Highway Commercial Zoning District, 5401 Campbell Road. (GPC Case No. 19-19-SE)

**Scott Ankerson, Planning Director**, gave a brief overview of the case.

### **REQUEST:**

The Planning Department has received a request from John W. Mallett, Jr. for a Special Exception Permit that would allow a Mobile Home in a C-3, Highway Commercial Zoning District, at 5401 Campbell Road, PID#85298055.000. The application fee of \$250 was paid on September 17, 2019. All public notice requirements have been met.

### **BACKGROUND:**

The request property is zoned C-3 Highway Commercial.

1. Location: 5401 Campbell Road (See Exhibit A)
2. General features of the proposed project:  
Mobile Home: 28' x 66' (1848 square feet)  
Site Size: .30 Acres
3. Potable Water and Wastewater Services: Existing from City
4. Current Zoning (See Exhibit B): C-3 Highway Commercial.
5. Current Surrounding Zoning (See Exhibit B): C-3 Highway Commercial, and AG Agricultural.
6. Current Surrounding Existing Land Use (See Exhibit C): Mobile Home and Vacant.
7. Comprehensive Plan Future Land Use Designation (See Exhibit D): Regional Scale Commercial

### **DISCUSSION:**

The following addresses the review criteria for a Special Exception outlined in Section 4.16.4 of the UDO.

1. Explain how a literal interpretation of the City of Gautier's Unified Development Ordinance would deprive the applicant of rights commonly enjoyed by others

of the district in which the property is located, and would work unnecessary hardship upon the applicant?

*Applicant: Due to this area with other mobile homes in this area, I see no problem with me moving my mobile home on this property to be close to my family and raise a family of my own. This has been a wish of my stepdad for thirty years. His two other sons are right behind him. We are a very close family and want to keep it that way. Family is the key to success. I will make this property beautiful.*

*Staff Finding: This area was annexed into the City in 2002. Prior to the annexation, this area was zoned Agricultural. The applicant states that the property was bought prior to the zoning change and that it was bought with the intent to place a mobile home on it for family use at a later date. There are other mobile homes in the immediate vicinity and no businesses in that area. Staff finds that denying the proposed use would deprive the applicant of the rights commonly enjoyed by others in the area.*

2. Explain how the requested Special Exception will be in harmony with the purpose of the City of Gautier's Unified Development Ordinance and will not be injurious to the neighborhood or the general welfare?

*Applicant Response: We are right in sync with that area. There are other mobile homes in the area already. The neighbors do not have a problem with mobile homes in the area. There was a mobile home on this property since 1958, so I see no problem with it.*

*Staff Finding: There are currently mobile homes in the immediate vicinity of the proposed site of the Special Exception. Staff's opinion is that approval of the request will not negatively affect the neighborhood.*

3. Explain how the special circumstances requiring the proposed Special Exception are not results of actions of the applicant.

*Applicant Response: When these plans were made years ago this land was county. Then it was annexed. My stepdad has had a vision to let his sons live there. He married my mom and gave me this property so I can raise my two sons and be close to my mother.*

*Staff Finding: There is no evidence to indicate that special circumstances requiring the Special Exception were results of the action of the applicant. Staff finds that the Special Exception will not negatively affect the surrounding area, or cause a detriment to the surrounding properties.*

### **DETERMINATION OF APPLICABLE LAW:**

1. The UDO defines a Special Exception as a relaxation of the terms of the Unified Development Ordinance where such an exception will not be contrary to the public interest, and where, owing to conditions peculiar to the property, a literal enforcement of the ordinance would result in undue hardship. Special Exceptions are necessary when an applicant seeks to establish or expand a use not ordinarily permitted in a specific zoning district. "Special Exceptions" are not transferable from one (1) owner of land to another.
2. Special Exception requires a public hearing before the Planning Commission and approval by the City Council (Section 4.14 of the UDO).
3. Once an application for a Special Exception is submitted to the Planning Department, the procedures outlined in UDO Section 4.14.1 will be followed. At the appropriate time, The Planning Commission will conduct a public hearing to determine whether the applicant meets all relevant criteria, and make a recommendation to City Council pursuant to UDO Section 4.14.4. City Council, pursuant to UDO Section 4.14.4(C), will then consider the matter at its next regularly scheduled meeting and approve or deny the Special Exception.
4. A Special Exception is required for uses not ordinarily permitted in a specific zoning district. Special Exceptions are not permitted by right, and may only be granted when certain criteria are established. (4.16.4)
5. Special Exceptions do not run with the land, and may be revoked by the Planning Department if any of the following circumstances are discovered:
  - A. The property changes ownership
  - B. The property is being utilized in a manner not permitted under the zoning regulations or the special exception; or
  - C. The property ceases to be used for the purpose allowed in the Special Exception for a period of one hundred eighty (180) days during the existence of the Special Exception.

### **RECOMMENDATION & CONCLUSION:**

Staff finds that the Special Exception proposed use will be compatible and harmonious with the area and recommends approval with no specific proposed conditions.

**Mr. Ankerson** stated he would like to change his recommendation regarding no proposed conditions. Noting that C-3 Districts have a rear setback requirement of zero feet, he would advise establishing setbacks if the special exception was approved.

The Planning Commission may:

1. Recommend that City Council approve the Special Exception;
2. Recommend that City Council approve the Special Exception with changes; or
3. Recommend that City Council deny the Special Exception.

**Chairman Wooten** asked if the applicant was present and wished to speak.

**John Mallett, Jr.** spoke as to why he was requesting the Special Exception. He stated that his stepfather had given him the property to place a mobile home on so that he and his family could live in the same immediate area as his mother, stepfather and two stepbrothers. He also stated that his stepfather had purchased the property years before with this in mind.

**There were none in attendance speaking in opposition.**

**Chairman Wooten** stated that the property was zoned Agricultural prior to the City annexing the area.

**ACTION TAKEN:**

**Chairman Wooten** made a motion to recommend that City Council approve the Special Exception based on Staff's Finding of Facts and placing conditions requiring a 25' rear setback, a 50' front setback and a 20' side setback and at least a 5' rear setback on accessory structures.

**Commissioner Davis** seconded the motion and the following vote was recorded:

|              |                       |
|--------------|-----------------------|
| <b>AYES:</b> | <b>David Wooten</b>   |
|              | <b>Kay C. Jamison</b> |
|              | <b>Jimmy Green</b>    |
|              | <b>Joshua Ward</b>    |
|              | <b>Paul Gainer</b>    |
|              | <b>James Lee</b>      |
|              | <b>William Davis</b>  |

**Motion passed.**

Councilman Vaughan made the motion to approve the Supplemental Agreement No. 1 to Right of Way Technology, Inc.'s contract to provide professional services for right-of-way acquisition for the Martin Bluff Road Widening Project, as presented. Councilwoman Martin seconded the motion. The vote was carried unanimously.

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 251-2019**

**WHEREAS**, the Grants and Projects Department request the City Council to approve a Supplemental Agreement No. 1 to Right of Way Technology, Inc. for the Martin Bluff Road Widening Project; and

**WHEREAS**, the project is intended to provide improved traffic operations and safety on Martin Bluff Road; and

**WHEREAS**, the supplemental agreement will add \$1,200.00 to the cost of the contract in order to pay the residential relocation reviewer for work already performed on two parcels in order to close out the right of way phase of the project. This supplemental agreement language was provided by MDOT;

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the City approves a Supplemental Agreement No.1 to Right of Way Technology, Inc.'s contract to provide professional services for right-of-way acquisition for the Martin Bluff Road Widening Project: STP-9194-00(001)LPA/105069-801000.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary.

Motion was made by **Councilman Vaughan**, seconded by **Councilwoman Martin**, and the following vote was recorded:

**AYES:**       **Phil Torjusen**  
                  **Mary Martin**  
                  **Richard Jackson**  
                  **Casey Vaughan**  
                  **Rusty Anderson**  
                  **Adam Colledge**

**NAYS:**       **None**

**ABSENT:**     **Cameron George**

---

MAYOR

ATTEST:

---

CITY CLERK

**Passed and Adopted** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of November 19, 2019.

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** April Stennett, Grants Administrator  
**Date:** 11/13/2019  
**Subject:** Supplemental Agreement No. 1 to Right of Way Technology, Inc. Contract for Martin Bluff Road Widening Project: STP-9194-00(001)LPA/105069-801000

---

**REQUEST:**

The Grants and Projects Department requests City Council approval of Supplemental Agreement No. 1 to Right of Way (ROW) Technology, Inc.'s contract to provide professional services for right-of-way acquisition for the Martin Bluff Road Widening Project.

**BACKGROUND:**

This project is intended to provide improved traffic operations and safety on Martin Bluff Road. The City advertised in November 2013 for professional services for Right of Way Appraisal and Review Appraisal Services, Legal Services, and Acquisition Agent Services. City Council selected ROW Technology, Inc. to provide these services at the March 18, 2014 City Council meeting according to MDOT and FHWA Consultant Selection Process requirements.

**DISCUSSION:**

This supplemental agreement will add \$1,200.00 to the cost of the contract in order to pay the residential relocation reviewer for work already performed on two parcels in order to close out the right of way phase of the project. This supplemental agreement language was provided by MDOT.

**RECOMMENDATION:**

The Grants and Projects Department recommends that City Council approve Supplemental Agreement No. 1 to Right of Way (ROW) Technology, Inc.'s contract to provide professional services for right-of-way acquisition for the Martin Bluff Road Widening Project.

The City Council may:

- 1) Approve Supplemental Agreement No. 1 as presented;
- 2) Not approve Supplemental Agreement No. 1.

**ATTACHMENTS:**

1. Supplemental Agreement No. 1

Between the  
City of Gautier And Right of Way Technology, Inc.

*SUPPLEMENTAL AGREEMENT NO. 1*

*Martin Bluff Road Widening Project  
Jackson County  
STP-91914-00(001) LPA 105069-801000*

WHEREAS, *Right of Way Technology, Inc.* (the CONSULTANT) entered into Right of Way Real Estate Services Contract with the *City of Gautier* (the LPA) on the 20<sup>th</sup> day of July 2017, to perform Appraisal, Appraisal Review, Acquisition, Relocation, Property Management and Title Services, as provided for in Project No. STP-9194-00(001) LPA 105069-801000;

WHEREAS, the CONSULTANT has been requested to provide Relocation Review services resulting from a change in the Department of Transportation funding and scope of the project for policy change regarding relocation assistance review in force and effect beginning July 1, 2018; and,

WHEREAS, the LPA agrees that the CONSULTANT is entitled to additional compensation for Additional Services (Extra Work) as required by the LPA; and

WHEREAS, the CONSULTANT agrees to perform the Extra Work for an additional cost not to exceed \$1,200.00.

NOW THEREFORE, it is mutually agreed that the CONSULTANT will accomplish such Additional Services (Extra Work) in accordance with the Contract as modified herein and the LPA will compensate the CONSULTANT for services as follows:

Scope-of-Work

The CONSULTANT has been requested to provide additional services related to the PROJECT as shown in Exhibit 2 – Scope of Work, of original agreement.

The Maximum Allowable Cost shall be amended to add the sum of \$1,200.00 so the revised total Maximum Allowable Contract Cost is \$326,275.00.



**Fees and Expenses Schedule:**

|                                      | <b>Est. No. of<br/>Parcels</b> | <b>Cost per<br/>Parcel</b> | <b>Total<br/>Contract</b> |
|--------------------------------------|--------------------------------|----------------------------|---------------------------|
| <b>Original</b>                      | <b>27</b>                      |                            | <b>\$325,075.00</b>       |
| <b>Residential Relocation Review</b> | <b>1</b>                       | <b>\$1,200.00</b>          | <b>\$ 1,200.00</b>        |
| <b>Totals</b>                        |                                |                            | <b>\$326,275.00</b>       |
|                                      |                                |                            |                           |

The term date of this Supplemental Agreement is hereby retroactive to MDOT policy change date of July 1, 2018, through the LOA termination date of the Contract.

This Supplemental Agreement in no way modifies or changes the original of which it becomes a part except as specifically stated herein.

Dated, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

City of Gautier

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Paula Yancey, City Manager

Right of Way Technology, Inc.

Dated, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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Mark Dye, President

## **Exhibit A**

### **Relocation Assistance Review**

**Due to the complexity of the relocations and/or the size of the project, the CONSULTANT shall conduct a review of the documentation of Relocation Assistance payments and services in each file to ascertain compliance with all local, state, and federal regulations.**

**The CONSULTANT Relocation Review agent(s) shall be independent of the Relocation Assistance agent(s) and shall provide a report to the CONSULTANT upon conclusion of review of each relocation file.**

**Relocation assistance review shall include the following:**

- Review Relocation Assistance Agent'(s) statement;
- Review relocation comparable brochure;
- Review and approve purchase supplement and moving expense offer computation for residential owners;
- Review and approve rent supplement and moving expense offer computation for residential tenants;
- Review and approve moving expense offer computation and business reestablishment for business owners and business tenants;
- Review and approve all claims for purchase supplement payment, incidental expense, and moving expense for residential owners;
- Review and approve all claims for rent supplement payment and moving expenses for residential tenants;
- Review and approve all claims for business reestablishment, search expense, fixed payment, and moving expense for business owners and business tenants; and
- Review and approve closure of all relocation files.

## **Exhibit B**

### **Progress Schedule**

**All Relocation and Relocation Review must be completed within 24 months after the notice to proceed is issued.**

Councilwoman Martin made the motion to approve to approve the Docket of Claims, as presented, provided that all entries thereon are true, correct, properly entered and not fraudulent. Councilman Colledge seconded the motion. The vote was carried unanimously.

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 252-2019**

**WHEREAS**, Miss. Code Ann. 21-39-9 requires governing authority to review all unpaid claims and determine if there is an obligation. An obligation exists if the related materials and supplies were properly contracted for and received by the municipality; and

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that Docket of Claims is hereby approved, provided that all entries thereon are true, correct, properly entered and not fraudulent.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary.

Motion was made by **Councilwoman Martin**, seconded by **Councilman Colledge**, and the following vote was recorded:

**AYES:**        **Phil Torjusen**  
                  **Mary Martin**  
                  **Richard Jackson**  
                  **Casey Vaughan**  
                  **Rusty Anderson**  
                  **Adam Colledge**

**NAYS:**        **None**

**ABSENT:**     **Cameron George**

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**MAYOR**

**ATTEST:**

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**CITY CLERK**

**Passed and Adopted** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of November 19, 2019.

| Fund | Name of Claimant           | Trans #                          | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|------|----------------------------|----------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 001  | SECURE NETWORKS LLC        | 200327                           | 11/19/2019   | 11/01/2019 |              |              |              |                      |
|      | Account Number 001-092-698 | Description                      |              | Invoice #  | Date         | P.O.         | 2,280.00     |                      |
|      |                            | DEC 2019 NETWORK SERVICES        |              | 3952       | 10/14/2019   |              | Amount       | 2,280.00             |
| 001  | O'REILLY AUTO PARTS        | 200328                           | 11/19/2019   | 11/01/2019 |              |              |              |                      |
|      | Account Number             | Description                      |              | Invoice #  | Date         | P.O.         | 1,173.47     |                      |
|      | 001-100-570                | IDLER PULLEY: U #12411           |              | 1978145071 | 09/30/2019   |              | Amount       | 38.15                |
|      | 001-100-570                | NEW WTR PUMP: U #12411           |              | 1978145074 | 09/30/2019   |              |              | 98.04                |
|      | 001-100-570                | THERMOSTAT: U #12411             |              | 1978145075 | 09/30/2019   |              |              | 18.14                |
|      | 001-100-570                | COOL TEM SEN: U #12411           |              | 1978145088 | 09/30/2019   |              |              | 27.69                |
|      | 001-100-639                | 1GAL TRANS FLD: GENERATOR        |              | 1978145237 | 10/01/2019   |              |              | 21.99                |
|      | 001-100-570                | BODY BOLT: U #19414              |              | 1978145303 | 10/02/2019   |              |              | 3.49                 |
|      | 001-100-639                | BATT, CORE CHG: POLARIS          |              | 1978145512 | 10/04/2019   |              |              | 110.27               |
|      | 001-100-639                | CDT RTN: BATT, CORE EXCHANGE     |              | 1978145512 | 10/04/2019   |              |              | -10.00               |
|      | 001-100-639                | BATT, CORE CHG: HONDA 4 WHLR     |              | 1978145942 | 10/08/2019   |              |              | 89.26                |
|      | 001-100-639                | CDT RTN: BATT, CORE CHG          |              | 1978145942 | 10/08/2019   |              |              | -10.00               |
|      | 001-100-570                | MICRO-V BELT: U #17530           |              | 1978146222 | 10/10/2019   |              |              | 20.56                |
|      | 001-100-570                | 02 SENSOR, FREIGHT: U #17530     |              | 1978146225 | 10/10/2019   |              |              | 34.45                |
|      | 001-100-570                | HEADLIGHT BULB: U #59            |              | 1978146682 | 10/14/2019   |              |              | 5.19                 |
|      | 001-100-570                | HEADLIGHT BULB (2)               |              | 1978146725 | 10/15/2019   |              |              | 10.38                |
|      | 001-100-559                | 5AMP BLADE FUSE                  |              | 1978146860 | 10/16/2019   |              |              | 3.99                 |
|      | 001-090-638                | TIE ROD, BALL JOINT, HUB ASBLY   |              | 1978147533 | 10/23/2019   |              |              | 436.35               |
|      | 001-090-638                | SEMI-MET PAD, BRAKE ROTOR (2)    |              | 1978147533 | 10/23/2019   |              |              | 109.99               |
|      | 001-100-570                | HEADLIGHT BULB: U #66            |              | 1978147687 | 10/25/2019   |              |              | 5.19                 |
|      | 001-100-570                | STABIL LINK, ABS SENSOR: U#16160 |              | 1978147690 | 10/25/2019   |              |              | 148.88               |
|      | 001-100-570                | WIPER BLADE (3): U #16160        |              | 1978147690 | 10/25/2019   |              |              | 11.46                |
| 001  | CABLE ONE INC              | 200333                           | 11/19/2019   | 11/04/2019 |              |              |              |                      |
|      | Account Number 001-092-698 | Description                      |              | Invoice #  | Date         | P.O.         | 130.07       |                      |
|      |                            | NOV 2019: #107571481             |              | 10252019   | 11/01/2019   |              | Amount       | 130.07               |
| 001  | CABLE ONE INC              | 200334                           | 11/19/2019   | 11/04/2019 |              |              |              |                      |
|      | Account Number 001-170-698 | Description                      |              | Invoice #  | Date         | P.O.         | 84.62        |                      |
|      |                            | NOV 2019: SR BLDG #120793682     |              | 10252019   | 11/01/2019   |              | Amount       | 84.62                |
| 001  | CENTERPOINT ENERGY         | 200335                           | 11/19/2019   | 11/04/2019 |              |              |              |                      |
|      | Account Number 001-161-630 | Description                      |              | Invoice #  | Date         | P.O.         | 26.98        |                      |
|      | 001-161-630                | CENTRAL FIRE STN: 9/25-10/24/19  |              | 11000885-1 | 10/31/2019   |              | Amount       | 15.98                |
|      |                            | SOUTH FIRE STN: 9/25-10/24/19    |              | 11000999-0 | 10/31/2019   |              |              | 11.00                |
| 001  | DPS CRIME LAB              | 200336                           | 11/19/2019   | 11/04/2019 |              |              |              |                      |
|      | Account Number 001-100-699 | Description                      |              | Invoice #  | Date         | P.O.         | 60.00        |                      |
|      |                            | ANALYTIC FEES                    |              | 90085204   | 11/01/2019   |              | Amount       | 60.00                |
| 001  | TEC                        | 200341                           | 11/19/2019   | 11/05/2019 |              |              |              |                      |
|      | Account Number 001-092-605 | Description                      |              | Invoice #  | Date         | P.O.         | 115.93       |                      |
|      |                            | MONTHLY LONG DISTANCE            |              | 978461     | 11/01/2019   |              | Amount       | 115.93               |

| Fund | Name of Claimant                       | Trans #                      | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|------|----------------------------------------|------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 001  | AUTO TRUCK AND TRAILER PARTS INC       | 200342                       | 11/19/2019   | 11/06/2019 |              |              | 1,219.17     |                      |
|      | Account Number                         | Description                  | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-100-570                            | CONTROL ARM (2): U #12411    | 278269       | 10/01/2019 |              |              |              | 169.88               |
|      | 001-100-570                            | OIL FILTER (12): POLICE DEPT | 278295       | 10/01/2019 |              |              |              | 26.40                |
|      | 001-100-570                            | CONTROL ARM: U #12411        | 278268       | 10/01/2019 |              |              |              | 116.71               |
|      | 001-100-570                            | BATT: U #51                  | 278355       | 10/03/2019 |              |              |              | 130.00               |
|      | 001-100-570                            | BATT: U #15809               | 278434       | 10/08/2019 |              |              |              | 105.00               |
|      | 001-100-570                            | ANTIFREZ (4): POLICE DEPT    | 278496       | 10/11/2019 |              |              |              | 74.96                |
|      | 001-161-638                            | BATT: RE-1                   | 278511       | 10/11/2019 |              |              |              | 105.00               |
|      | 001-161-638                            | BATT: RE-1                   | 278514       | 10/11/2019 |              |              |              | 105.00               |
|      | 001-100-570                            | HYPERLUBE (8): POLICE CHRGS  | 278635       | 10/17/2019 |              |              |              | 103.36               |
|      | 001-161-638                            | ROTELLA (3): FIRE ENGS       | 278681       | 10/21/2019 |              |              |              | 49.50                |
|      | 001-100-570                            | BATT: BLACK CHRGR            | 278825       | 10/29/2019 |              |              |              | 130.00               |
|      | 001-100-570                            | LUBE (8): POLICE CHRGS       | 278847       | 10/30/2019 |              |              |              | 103.36               |
| 001  | MALLETTE BROTHERS CONSTRUCTION INC     | 200343                       | 11/19/2019   | 11/06/2019 |              |              | 1,886.55     |                      |
|      | Account Number                         | Description                  | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-201-576                            | 17.86 A-BASE LIMESTONE TN    | 20909        | 10/31/2019 |              |              |              | 535.80               |
|      | 001-201-576                            | 18.04 ASPHALT TN             | 20909        | 10/31/2019 |              |              |              | 1,350.75             |
| 001  | GOVERNMENT BRANDS SHARED SERVICES      | 200344                       | 11/19/2019   | 11/06/2019 |              |              | 1,475.00     |                      |
|      | Account Number                         | Description                  | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-010-698                            | NOV 2019 COURT SUPPORT       | 1-45354      | 11/01/2019 |              |              |              | 1,475.00             |
| 001  | M & E FEED & SEED                      | 200346                       | 11/19/2019   | 11/07/2019 |              |              | 212.95       |                      |
|      | Account Number                         | Description                  | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-100-514                            | DOG FOOD                     | 5326         | 09/17/2019 |              |              |              | 41.99                |
|      | 001-100-514                            | DOG FOOD                     | 5331         | 10/04/2019 |              |              |              | 41.99                |
|      | 001-100-514                            | DOG FOOD                     | 5342         | 10/00/2019 |              |              |              | 42.99                |
|      | 001-100-514                            | DOG FOOD                     | 5336         | 10/22/2019 |              |              |              | 42.99                |
|      | 001-100-514                            | DOG FOOD                     | 5343         | 11/01/2019 |              |              |              | 42.99                |
| 001  | AT&T GLOBAL NETWORK SERVS LLC          | 200347                       | 11/19/2019   | 11/08/2019 |              |              | 229.64       |                      |
|      | Account Number                         | Description                  | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-100-699                            | NCIC EQUIPMENT CHARGES       | GG55939      | 11/01/2019 |              |              |              | 229.64               |
| 001  | AIRGAS USA LLC                         | 200369                       | 11/19/2019   | 11/08/2019 |              |              | 215.93       |                      |
|      | Account Number                         | Description                  | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-205-588                            | CYLINDER RENTAL              | 9965934137   | 10/31/2019 |              |              |              | 215.93               |
| 001  | AT&T INTERSTATE DED PRIVATE LINE SERVS | 200370                       | 11/19/2019   | 11/08/2019 |              |              | 215.39       |                      |
|      | Account Number                         | Description                  | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-100-699                            | ACCUNET T1.5 DIGITAL SERV    | 3113206011   | 11/01/2019 |              |              |              | 215.39               |
| 001  | ADVANCE AUTO PARTS                     | 200372                       | 11/19/2019   | 11/08/2019 |              |              | 26.12        |                      |
|      | Account Number                         | Description                  | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-161-559                            | 6" LIGHTNING CBL             | 0770         | 10/18/2019 |              |              |              | 15.63                |
|      | 001-161-559                            | 3.4A USB CAR CHRGR           | 0770         | 10/18/2019 |              |              |              | 10.49                |



| Fund | Name of Claimant                      | Trans #                         | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|------|---------------------------------------|---------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 001  | LOWES HOME CENTERS INC                | 200373                          | 11/19/2019   | 11/12/2019 |              |              | 1,503.48     |                      |
|      | Account Number                        | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-170-559                           | HM BLANK KEY (5)                |              | 902523     | 09/25/2019   |              |              | 11.30                |
|      | 001-170-559                           | POWERSHOT STAPLE GUN            |              | 902615     | 09/26/2019   |              |              | 20.89                |
|      | 001-170-512                           | 200FT CAUTION TAPE (2): CRUISIN |              | 909421     | 09/30/2019   |              |              | 12.30                |
|      | 001-170-512                           | STEEL REBAR CAP (6): CRUISIN    |              | 909421     | 09/30/2019   |              |              | 18.48                |
|      | 001-170-512                           | 500PK 11-IN CABLE TIE: CRUISIN  |              | 909421     | 09/30/2019   |              |              | 28.51                |
|      | 001-170-512                           | 100CT MARK FLAG (2): CRUISIN    |              | 909421     | 09/30/2019   |              |              | 18.98                |
|      | 001-170-512                           | 20LB INSECT KILLER: CRUISIN     |              | 909421     | 09/30/2019   |              |              | 15.20                |
|      | 001-205-559                           | BROOM, DUST PAN, PUSH BROOM     |              | 911762     | 10/02/2019   |              |              | 27.67                |
|      | 001-205-559                           | COMMERCIAL WTR HOSE (2)         |              | 911762     | 10/02/2019   |              |              | 72.17                |
|      | 001-205-559                           | COTTON MOVING BLANKET (3)       |              | 901596     | 10/02/2019   |              |              | 56.97                |
|      | 001-205-559                           | 10FT TIE DOWNS 4PK              |              | 901596     | 10/02/2019   |              |              | 13.57                |
|      | 001-170-512                           | 6FT T-POST(10): CRUISIN BANNERS |              | 919576     | 10/04/2019   |              |              | 41.60                |
|      | 001-170-512                           | PVC PRIMER, HOSE WASHER         |              | 909574     | 10/06/2019   |              |              | 11.08                |
|      | 001-170-512                           | PVC COUP (3), SCH40 PIPE (4)    |              | 909574     | 10/06/2019   |              |              | 30.98                |
|      | 001-170-512                           | 2X4X14 TC LUMBER (4)            |              | 901388     | 10/06/2019   |              |              | 29.16                |
|      | 001-205-560                           | SUPPLIES: POINT CLEAR SIGN      |              | 902366     | 10/08/2019   |              |              | 29.42                |
|      | 001-205-559                           | KOBALT 8LB SLEDGE HAMMER        |              | 911312     | 10/10/2019   |              |              | 28.49                |
|      | 001-205-560                           | SUPPLIES: POINT CLEAR SIGN      |              | 902495     | 10/10/2019   |              |              | 15.73                |
|      | 001-205-560                           | 6PK PANSY(10), CROTN MAMEY(2)   |              | 911314     | 10/10/2019   |              |              | 47.28                |
|      | 001-170-635                           | REPR SINK: SR CENTER            |              | 909161     | 10/14/2019   |              |              | 33.20                |
|      | 001-205-559                           | DW 4-TOOL COMBO KIT W/CASE      |              | 901390     | 10/16/2019   |              |              | 255.55               |
|      | 001-205-559                           | DW CORDLESS RECIP SAW TOOL      |              | 901390     | 10/16/2019   |              |              | 170.05               |
|      | 001-100-559                           | BATT: AAA 24PK & AA 24CT        |              | 901329     | 10/16/2019   |              |              | 30.95                |
|      | 001-100-635                           | AC THERMOSTAT: POLICE DEPT      |              | 901329     | 10/16/2019   |              |              | 18.89                |
|      | 001-100-559                           | 5-TIER STEEL SHELVING UNIT (2)  |              | 901724     | 10/18/2019   |              |              | 170.96               |
|      | 001-205-559                           | 26FT FBGL EXTENSION LADDER      |              | 901358     | 10/21/2019   |              |              | 274.55               |
|      | 001-205-559                           | PICTURE HANGER SUPPLIES         |              | 901507     | 10/22/2019   |              |              | 19.55                |
| 001  | BORDIS & DANOS PLLC                   | 200374                          | 11/19/2019   | 10/12/2019 |              |              | 10,000.00    |                      |
|      | Account Number                        | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-060-602                           | NOV 2019 RETAINER               |              | 75         | 11/05/2019   |              |              | 10,000.00            |
| 001  | MATTHEW LACHAUSEE                     | 200375                          | 11/19/2019   | 10/12/2019 |              |              | 360.00       |                      |
|      | Account Number                        | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-010-602                           | JUDGE PRO TEM 10/28/19          |              | 4 HOURS    | 11/04/2019   |              |              | 360.00               |
| 001  | JACKSON COUNTY ADULT DETENTION CENTER | 200376                          | 11/19/2019   | 10/12/2019 |              |              | 5,810.00     |                      |
|      | Account Number                        | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-010-696                           | OCT 2019 ADC CHGS               |              | 10312019   | 11/05/2019   |              |              | 5,810.00             |
| 001  | MS DEPT OF FINANCE & ADMIN            | 200377                          | 11/19/2019   | 10/12/2019 |              |              | 20,974.75    |                      |
|      | Account Number                        | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-000-300                           | OCT 2019 COURT ASSESSMENTS      |              | 10312019   | 11/01/2019   |              |              | 20,974.75            |
| 001  | MS DEPT OF PUBLIC SAFETY              | 200378                          | 11/19/2019   | 10/12/2019 |              |              | 1,248.00     |                      |
|      | Account Number                        | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 001-000-300                           | OCT 2019 SPECIAL ASSESSMENTS    |              | 10312019   | 11/01/2019   |              |              | 1,248.00             |

| Fund | Name of Claimant                                                          | Trans # | Release Date | Claim Date | Claim Number                                                             | Check Number                          | Claim Amount                     | Approved/Disapproved       |
|------|---------------------------------------------------------------------------|---------|--------------|------------|--------------------------------------------------------------------------|---------------------------------------|----------------------------------|----------------------------|
| 001  | MS DEPT OF PUBLIC SAFETY<br>Account Number<br>001-000-300                 | 200379  | 11/19/2019   | 10/12/2019 | Description<br>OCT 2019 INTERLOCK FEES                                   | Invoice #<br>10312019                 | Date<br>11/01/2019               | P.O.<br>91.00<br>Amount    |
| 001  | JACKSON COUNTY BOARD OF SUPERVISORS<br>Account Number<br>001-092-698      | 200380  | 11/19/2019   | 10/12/2019 | Description<br>RESEARCH-TAX SALE (875)                                   | Invoice #<br>11                       | Date<br>10/31/2019               | P.O.<br>4,375.00<br>Amount |
| 001  | DIRECTV LLC<br>Account Number<br>001-161-698                              | 200381  | 11/19/2019   | 10/12/2019 | Description<br>WEST STN: 022727663 (DEC)                                 | Invoice #<br>11132019                 | Date<br>11/14/2019               | P.O.<br>152.00<br>Amount   |
| 001  | DIXIE GLASS MS GULF COAST<br>Account Number<br>001-170-635                | 200382  | 11/19/2019   | 10/12/2019 | Description<br>REPAIR FRONT GLASS DOOR                                   | Invoice #<br>I1042475                 | Date<br>11/05/2019               | P.O.<br>520.77<br>Amount   |
| 001  | FOSTERS A/C & HEATING INC<br>Account Number<br>001-100-635<br>001-100-635 | 200383  | 11/19/2019   | 10/12/2019 | Description<br>ADMIN HALL: REPL FAN MOTOR<br>DISPATCH: #6 PULL-CLN COILS | Invoice #<br>W1057135<br>W1057125     | Date<br>10/24/2019<br>10/24/2019 | P.O.<br>397.00<br>Amount   |
| 001  | JOSH LATCH<br>Account Number<br>001-161-681                               | 200385  | 11/19/2019   | 10/12/2019 | Description<br>PER DIEM REIMB: MFIA SEMINAR                              | Invoice #<br>11012019                 | Date<br>11/12/2019               | P.O.<br>66.93<br>Amount    |
| 001  | LOCAL GOVERNMENT SERVICES LLC<br>Account Number<br>001-021-601            | 200386  | 11/19/2019   | 10/12/2019 | Description<br>FF SERVS: TELEPAK/CENTERPOINT                             | Invoice #<br>1816                     | Date<br>10/10/2019               | P.O.<br>2,887.50<br>Amount |
| 001  | PITNEY BOWES INC<br>Account Number<br>001-092-698<br>001-092-698          | 200387  | 11/19/2019   | 10/12/2019 | Description<br>SUPPLIES: RED INK (2)<br>SUPPLIES: TAPE STRIPS (300)      | Invoice #<br>1014186120<br>1014186121 | Date<br>10/23/2019<br>10/23/2019 | P.O.<br>337.07<br>Amount   |
| 001  | POWELL CONSTRUCTION SERVICES INC<br>Account Number<br>001-201-637         | 200388  | 11/19/2019   | 10/12/2019 | Description<br>REPR G/V PED BUTTONS:SRE & HS                             | Invoice #<br>3046                     | Date<br>10/31/2019               | P.O.<br>345.60<br>Amount   |
| 001  | ACE DATA STORAGE INC<br>Account Number<br>001-100-699                     | 200389  | 11/19/2019   | 10/12/2019 | Description<br>OCT 2019-SHREDDING SERVICE                                | Invoice #<br>68290                    | Date<br>11/01/2019               | P.O.<br>105.00<br>Amount   |
| 001  | AT&T MOBILITY<br>Account Number<br>001-161-605                            | 200390  | 11/19/2019   | 10/12/2019 | Description<br>CELL SERV(3): 287294177255X                               | Invoice #<br>11052019                 | Date<br>10/27/2019               | P.O.<br>130.81<br>Amount   |
| 001  | C SPIRE WIRELESS<br>Account Number<br>001-021-605<br>001-040-605          | 200391  | 11/19/2019   | 10/12/2019 | Description<br>CITY MGR CELL PHONE<br>ADMIN CELL PHONES                  | Invoice #<br>0030759348<br>0030759348 | Date<br>10/31/2019<br>10/31/2019 | P.O.<br>782.65<br>Amount   |
|      |                                                                           |         |              |            |                                                                          |                                       |                                  | 48.17<br>130.53            |



| Fund | Name of Claimant   | Trans #                       | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|------|--------------------|-------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 001  | C SPIRE WIRELESS   | 200391                        | 11/19/2019   | 10/12/2019 |              |              | 782.65       | (CONTINUED)          |
|      | Account Number     | Description                   | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-090-605        | BLDG-PLNG CELL PHONES         | 0030759348   | 10/31/2019 |              |              | 151.07       |                      |
|      | 001-090-698        | IPAD SERVICE (3)              | 0030759348   | 10/31/2019 |              |              | 102.57       |                      |
|      | 001-094-605        | GRANT-PROJ CELL PHONES        | 0030759348   | 10/31/2019 |              |              | 96.34        |                      |
|      | 001-170-605        | RECREATION CELL PHONES        | 0030759348   | 10/31/2019 |              |              | 202.52       |                      |
|      | 001-205-605        | MAINT CELL PHONE              | 0030759348   | 10/31/2019 |              |              | 51.45        |                      |
| 001  | FUELMAN            | 200394                        | 11/19/2019   | 10/12/2019 |              |              | 2,687.78     |                      |
|      | Account Number     | Description                   | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-090-525        | UNL FUEL                      | NP57206850   | 11/04/2019 |              |              | 48.68        |                      |
|      | 001-100-525        | UNL FUEL                      | NP57206850   | 11/04/2019 |              |              | 2,127.22     |                      |
|      | 001-161-525        | UNL & DSL FUEL                | NP57206850   | 11/04/2019 |              |              | 346.77       |                      |
|      | 001-170-525        | UNL FUEL                      | NP57206850   | 11/04/2019 |              |              | 117.01       |                      |
|      | 001-205-525        | UNL FUEL                      | NP57206850   | 11/04/2019 |              |              | 48.10        |                      |
| 001  | FUELMAN            | 200398                        | 11/19/2019   | 10/12/2019 |              |              | 2,591.59     |                      |
|      | Account Number     | Description                   | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-090-525        | UNL FUEL                      | NP57240698   | 11/11/2019 |              |              | 44.96        |                      |
|      | 001-100-525        | UNL FUEL                      | NP57240698   | 11/11/2019 |              |              | 1,902.74     |                      |
|      | 001-161-525        | UNL & DSL FUEL                | NP57240698   | 11/11/2019 |              |              | 464.45       |                      |
|      | 001-170-525        | UNL FUEL                      | NP57240698   | 11/11/2019 |              |              | 128.43       |                      |
|      | 001-205-525        | UNL FUEL                      | NP57240698   | 11/11/2019 |              |              | 51.01        |                      |
| 001  | MSC 7511           | 200400                        | 11/19/2019   | 10/12/2019 |              |              | 470.88       |                      |
|      | Account Number     | Description                   | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-092-698        | FPO200-01 RENTAL FEE          | INV3365196   | 11/05/2019 |              |              | 470.88       |                      |
| 001  | CREDIT CARD CENTER | 200401                        | 11/19/2019   | 10/12/2019 |              |              | 532.00       |                      |
|      | Account Number     | Description                   | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-021-681        | HOTEL-BIRMINGHAM AL: YANCEY   | 325/KNGN     | 10/04/2019 |              |              | 132.25       |                      |
|      | 001-001-681        | HOTEL-BIRMINGHAM AL: TORJUSEN | 433/KNGN     | 10/04/2019 |              |              | 132.25       |                      |
|      | 001-060-602        | HOTEL-BIRMINGHAM AL: DANOS    | 322/KNGN     | 10/04/2019 |              |              | 135.25       |                      |
|      | 001-021-688        | HOTEL-BIRMINGHAM AL: SEYMOUR  | 825/KNGN     | 10/04/2019 |              |              | 132.25       |                      |
| 001  | CREDIT CARD CENTER | 200402                        | 11/19/2019   | 10/12/2019 |              |              | 4,942.96     |                      |
|      | Account Number     | Description                   | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-001-681        | MML FALL BOD MTG: TORJUSEN    | 09272019     | 09/30/2019 |              |              | 112.00       |                      |
|      | 001-001-681        | MML FALL BOD MTG: MARTIN      | 09272019     | 09/30/2019 |              |              | 112.00       |                      |
|      | 001-170-512        | BRASS RAFFLE TICKET DRUM      | 09302019     | 10/01/2019 |              |              | 54.99        |                      |
|      | 001-001-681        | MML SM TOWN CONF: ANDERSON    | 09302019     | 10/01/2019 |              |              | 85.00        |                      |
|      | 001-001-681        | MML SM TOWN CONF: MARTIN      | 09302019     | 10/01/2019 |              |              | 85.00        |                      |
|      | 001-001-681        | MML SM TOWN CONF: VAUGHAN     | 09302019     | 10/01/2019 |              |              | 85.00        |                      |
|      | 001-001-681        | MML SM TOWN CONF: TORJUSEN    | 09302019     | 10/01/2019 |              |              | 85.00        |                      |
|      | 001-170-512        | CRUISIN: OFFICE SUPPLIES      | 10032019     | 10/04/2019 |              |              | 16.00        |                      |
|      | 001-170-512        | CRUISIN: LUNCH ITEMS          | 10032019     | 10/04/2019 |              |              | 121.61       |                      |
|      | 001-170-512        | CRUISIN: BANANAS              | 10062019     | 10/07/2019 |              |              | 8.49         |                      |
|      | 001-170-512        | CRUISIN: BREAKFAST ITEMS      | 10062019     | 10/07/2019 |              |              | 16.05        |                      |
|      | 001-170-512        | CRUISIN: LUNCH CKN STRIPS     | 10062019     | 10/07/2019 |              |              | 70.35        |                      |
|      | 001-094-704        | ADOBE CREATIVE CLOUD 1 YR     | 10092019     | 10/11/2019 |              |              | 599.88       |                      |
|      | 001-170-513        | HALLOWEEN: MASKS (300)        | 10092019     | 10/11/2019 |              |              | 154.62       |                      |
|      | 001-094-681        | FLIGHT-NGMA CONF: STENNETT    | 10092019     | 10/11/2019 |              |              | 364.60       |                      |
|      | 001-170-535        | CREDIT REFUND 26786176        | 10132019     | 10/14/2019 |              |              | -14.97       |                      |

| Fund | Name of Claimant           | Trans #                          | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|------|----------------------------|----------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 001  | CREDIT CARD CENTER         | 200402                           | 11/19/2019   | 10/12/2019 |              |              | 4,942.96     | (CONTINUED)          |
|      | Account Number             | Description                      | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-170-513                | HALLOWEEN: B BAGS, SLIME, RINGS  | 10112019     | 10/14/2019 |              |              | 66.03        |                      |
|      | 001-170-513                | HALLOWEEN: NOVELTY ASST, PUMPKNS | 10112019     | 10/14/2019 |              |              | 66.68        |                      |
|      | 001-170-513                | HALLOWEEN: SPIDERS, OWL ORN KITS | 10112019     | 10/14/2019 |              |              | 68.31        |                      |
|      | 001-170-513                | HALLOWEEN: TREAT BAGS, RIBBON    | 10142019     | 10/15/2019 |              |              | 22.95        |                      |
|      | 001-170-513                | HALLOWEEN: OWL ORNAMENT KITS     | 10142019     | 10/16/2019 |              |              | 61.09        |                      |
|      | 001-001-681                | HOTEL CHARGE: BOTTLED WATER      | 10182019     | 10/21/2019 |              |              | 2.15         |                      |
|      | 001-001-681                | HOTEL-TUPELO: TORJUSEN, P        | 10182019     | 10/21/2019 |              |              | 388.00       |                      |
|      | 001-001-681                | HOTEL-TUPELO: MARTIN, M          | 10182019     | 10/21/2019 |              |              | 388.00       |                      |
|      | 001-001-681                | HOTEL-TUPELO: ANDERSON, C        | 10182019     | 10/21/2019 |              |              | 388.00       |                      |
|      | 001-001-681                | HOTEL TAX: REFUND REQUESTED      | 10182019     | 10/21/2019 |              |              | 35.89        |                      |
|      | 001-040-681                | HOTEL-TUPELO: FARABEE, S         | 10202019     | 10/21/2019 |              |              | 413.00       |                      |
|      | 001-040-681                | HOTEL TAX: REFUND RECVD (CK)     | 10202019     | 10/21/2019 |              |              | 38.21        |                      |
|      | 001-001-509                | GMYC: ROLLING UTILITY CRATE      | 10222019     | 10/23/2019 |              |              | 48.14        |                      |
|      | 001-170-513                | HALLOWEEN: HAY BALES             | 10232019     | 10/24/2019 |              |              | 68.00        |                      |
|      | 001-092-698                | MEMBERSHIP FEE: SAMS CLUB        | 10242019     | 10/28/2019 |              |              | 45.00        |                      |
|      | 001-170-513                | HALLOWEEN: SNACKS & TREATS       | 10252019     | 10/28/2019 |              |              | 197.42       |                      |
|      | 001-040-681                | HOTEL-HATTIESBURG: CLERK TRNG    | 10252019     | 10/28/2019 |              |              | 206.80       |                      |
|      | 001-100-559                | MGCCC TRUNK OR TREAT: CANDY      | 10252019     | 10/28/2019 |              |              | 483.67       |                      |
| 001  | CINTAS CORPORATION NO 2    | 200404                           | 11/19/2019   | 11/12/2019 |              |              | 390.35       |                      |
|      | Account Number             | Description                      | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-205-535                | MAINTENANCE                      | 4031480434   | 10/02/2019 |              |              | 78.07        |                      |
|      | 001-205-535                | MAINTENANCE                      | 4032017626   | 10/09/2019 |              |              | 78.07        |                      |
|      | 001-205-535                | MAINTENANCE                      | 4032590385   | 10/16/2019 |              |              | 78.07        |                      |
|      | 001-205-535                | MAINTENANCE                      | 4033146756   | 10/23/2019 |              |              | 78.07        |                      |
|      | 001-205-535                | MAINTENANCE                      | 4033704039   | 10/30/2019 |              |              | 78.07        |                      |
| 001  | CABLE ONE INC              | 200405                           | 11/19/2019   | 11/12/2019 |              |              | 91.88        |                      |
|      | Account Number             | Description                      | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-100-699                | NOV 2019 SUBSTN: #107718827      | 11012019     | 11/08/2019 |              |              | 91.88        |                      |
| 001  | DELTA COMPUTER SYSTEMS INC | 200411                           | 11/19/2019   | 11/12/2019 |              |              | 510.00       |                      |
|      | Account Number             | Description                      | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-092-698                | ACCTG SOFTWARE MAINT             | MN102269     | 10/23/2019 |              |              | 350.00       |                      |
|      | 001-092-698                | PRIV LICENSE SOFTWARE MAINT      | MN102269     | 10/23/2019 |              |              | 140.00       |                      |
|      | 001-092-698                | VOTER REG SOFTWARE MAINT         | MN104839     | 10/31/2019 |              |              | 20.00        |                      |
| 001  | CABLE ONE INC              | 200413                           | 11/19/2019   | 11/12/2019 |              |              | 71.37        |                      |
|      | Account Number             | Description                      | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-100-699                | NOV CABLE BOX: #118476316        | 11012019     | 11/08/2019 |              |              | 71.37        |                      |
| 001  | CABLE ONE INC              | 200414                           | 11/19/2019   | 11/12/2019 |              |              | 213.68       |                      |
|      | Account Number             | Description                      | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-100-699                | NOV 2019: #107718371             | 11012019     | 11/08/2019 |              |              | 213.68       |                      |
| 001  | AUTOZONE INC               | 200416                           | 11/19/2019   | 11/12/2019 |              |              | 300.92       |                      |
|      | Account Number             | Description                      | Invoice #    | Date       | P.O.         |              | Amount       |                      |
|      | 001-170-639                | 10W-40 OIL (2): POLARIS          | 4907623995   | 10/09/2019 |              |              | 19.58        |                      |
|      | 001-170-639                | 1QT 5W-30 MOTOR OIL (24)         | 4907628727   | 10/17/2019 |              |              | 52.56        |                      |
|      | 001-170-639                | 24QT OIL DRAIN CONTAINER         | 4907628727   | 10/17/2019 |              |              | 21.99        |                      |
|      | 001-170-638                | WIPER BLADE (2)                  | 4907628727   | 10/17/2019 |              |              | 4.98         |                      |



| Fund | Name of Claimant              | Trans #                        | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|------|-------------------------------|--------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 001  | AUTOZONE INC                  | 200416                         | 11/19/2019   | 11/12/2019 |              |              | 300.92       | (CONTINUED)          |
|      | Account Number                | Description                    | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-170-639                   | HD SAE 30 MOTOR OIL (12)       | 4907628727   | 10/17/2019 |              |              | 26.28        |                      |
|      | 001-170-639                   | 1QT 10W-30 MOTOR OIL (24)      | 4907628727   | 10/17/2019 |              |              | 52.56        |                      |
|      | 001-170-639                   | DURALAST BATT: LIGHT PLANT     | 4907629012   | 10/18/2019 |              |              | 114.99       |                      |
|      | 001-170-638                   | WIPER BLADE (2)                | 4907636912   | 10/31/2019 |              |              | 7.98         |                      |
| 001  | SEYMOUR ENGINEERING PLLC      | 200422                         | 11/19/2019   | 11/13/2019 |              |              | 2,100.00     |                      |
|      | Account Number                | Description                    | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-021-688                   | ENG SERV: BIRMINGHAM MTG       | 7300         | 10/28/2019 |              |              | 2,100.00     |                      |
| 001  | CAN'T MISS EMBROIDERY         | 200428                         | 11/19/2019   | 11/13/2019 |              |              | 1,362.50     |                      |
|      | Account Number                | Description                    | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-100-535                   | POLO W/BADGE (5)               | 23464        | 10/21/2019 | 200030       |              | 129.90       |                      |
|      | 001-100-535                   | BLACK JACKET W/GPD (9)         | 23527        | 11/04/2019 | 200073       |              | 299.25       |                      |
|      | 001-100-535                   | BLACK JACKET W/GPD EMBLEM      | 23527        | 11/04/2019 | 200073       |              | 34.49        |                      |
|      | 001-100-535                   | NAVY POLO W/BADGE (8)          | 23527        | 11/04/2019 | 200073       |              | 207.84       |                      |
|      | 001-100-535                   | NAVY POLO W/BADGE (6)          | 23527        | 11/04/2019 | 200073       |              | 176.88       |                      |
|      | 001-100-535                   | NAVY POLO W/GPD (2)            | 23527        | 11/04/2019 | 200073       |              | 73.96        |                      |
|      | 001-100-535                   | BLACK POLO (4)                 | 23527        | 11/04/2019 | 200073       |              | 103.92       |                      |
|      | 001-100-535                   | BLACK POLO W/BADGE (3)         | 23527        | 11/04/2019 | 200073       |              | 88.44        |                      |
|      | 001-100-535                   | BLACK POLO W/BADGE             | 23527        | 11/04/2019 | 200073       |              | 36.98        |                      |
|      | 001-100-535                   | AST COLOR POLO W/BADGE (5)     | 23527        | 11/04/2019 | 200073       |              | 129.90       |                      |
|      | 001-100-535                   | AST COLOR POLO W/GPD (3)       | 23527        | 11/04/2019 | 200073       |              | 80.94        |                      |
| 001  | ACTION PRINTING CENTER INC    | 200429                         | 11/19/2019   | 11/13/2019 |              |              | 345.11       |                      |
|      | Account Number                | Description                    | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-010-500                   | TRI COLOR RECEIPT PAPER(3000)  | 97864        | 11/12/2019 | 200056       |              | 345.11       |                      |
| 001  | GULF COAST BUSINESS SUPPLY CO | 200430                         | 11/19/2019   | 11/13/2019 |              |              | 185.97       |                      |
|      | Account Number                | Description                    | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-161-510                   | 12/CT BMF PAPER TOWELS (4)     | 197104       | 11/06/2019 | 200140       |              | 78.64        |                      |
|      | 001-161-510                   | CS 409 CLEANER 32OZ            | 197104       | 11/06/2019 | 200140       |              | 42.42        |                      |
|      | 001-161-510                   | DAWN LIQUID SOAP 38OZ (4)      | 197104       | 11/06/2019 | 200140       |              | 23.96        |                      |
|      | 001-161-510                   | 96/CT TISSUE                   | 197104       | 11/06/2019 | 200140       |              | 32.99        |                      |
|      | 001-161-510                   | COMET CLEANSER 21OZ (4)        | 197104       | 11/06/2019 | 200140       |              | 7.96         |                      |
| 001  | ANIMAL CARE EQUIPMENT &       | 200431                         | 11/19/2019   | 11/13/2019 |              |              | 159.60       |                      |
|      | Account Number                | Description                    | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-100-689                   | 5PK TYPE P DART 1.5CC 1/2" (9) | 76653        | 11/01/2019 | 200128       |              | 135.00       |                      |
|      | 001-100-689                   | SHIPPING                       | 76653        | 11/01/2019 | 200128       |              | 24.60        |                      |
| 001  | CUSTOM PRODUCTS CORPORATION   | 200432                         | 11/19/2019   | 11/13/2019 |              |              | 362.34       |                      |
|      | Account Number                | Description                    | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-201-565                   | STREET SIGNS (10)              | 327447       | 10/30/2019 | 200095       |              | 200.50       |                      |
|      | 001-201-565                   | U-CHANNEL BRACKET 50/BX (10)   | 327447       | 10/30/2019 | 200095       |              | 48.10        |                      |
|      | 001-201-565                   | 5.5 CROSS BRACKET (10)         | 327447       | 10/30/2019 | 200095       |              | 48.90        |                      |
|      | 001-201-565                   | BA NUTS VANDAL RESISTANT (20)  | 327447       | 10/30/2019 | 200095       |              | 18.00        |                      |
|      | 001-201-565                   | BOLT CARRIAGE HEAD (20)        | 327447       | 10/30/2019 | 200095       |              | 9.80         |                      |
|      | 001-201-565                   | NYLON WASHER (20)              | 327447       | 10/30/2019 | 200095       |              | 4.20         |                      |
|      | 001-201-565                   | FREIGHT                        | 327447       | 10/30/2019 | 200095       |              | 32.84        |                      |

| Fund | Name of Claimant                    | Trans #                        | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|------|-------------------------------------|--------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 001  | A-1 AUTO PARTS                      | 200433                         | 11/19/2019   | 11/13/2019 |              |              | 840.17       |                      |
|      | Account Number                      | Description                    | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-100-570                         | HEATER BLEND DOOR ACTUATOR     | 16273        | 10/31/2019 | 200122       |              | 24.17        |                      |
|      | 001-100-570                         | DYE AND FREON 12OZ             | 16273        | 10/31/2019 | 200122       |              | 15.50        |                      |
|      | 001-100-570                         | OIL                            | 16273        | 10/31/2019 | 200122       |              | 5.50         |                      |
|      | 001-100-570                         | R134 FRE 0.75                  | 16273        | 10/31/2019 | 200122       |              | 9.75         |                      |
|      | 001-100-570                         | HEATER CORE                    | 16273        | 10/31/2019 | 200122       |              | 109.48       |                      |
|      | 001-100-570                         | COOLANT                        | 16273        | 10/31/2019 | 200122       |              | 14.95        |                      |
|      | 001-100-570                         | SHOP SUPPLIES                  | 16273        | 10/31/2019 | 200122       |              | 2.00         |                      |
|      | 001-100-638                         | REMOVE AND REPLACE HEATER CORE | 16273        | 10/31/2019 | 200122       |              | 608.40       |                      |
|      | 001-100-638                         | VAC AND RECHARGE               | 16273        | 10/31/2019 | 200122       |              | 36.95        |                      |
|      | 001-100-570                         | DIS STEELED WATER (2)          | 16273        | 10/31/2019 | 200122       |              | 3.00         |                      |
|      | 001-100-570                         | FILTER                         | 16273        | 10/31/2019 | 200122       |              | 9.47         |                      |
|      | 001-100-570                         | HAZARDOUS MATERIALS: U #13408  | 16273        | 10/31/2019 | 200122       |              | 1.00         |                      |
| 001  | SUN HERALD ADVERTISING              | 200439                         | 11/19/2019   | 11/13/2019 |              |              | 900.00       |                      |
|      | Account Number                      | Description                    | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-170-512                         | FULL PAGE COLOR AD: CRUISIN    | 104389108    | 10/04/2019 | 191223       |              | 900.00       |                      |
| 001  | SUN HERALD ADVERTISING              | 200440                         | 11/19/2019   | 11/13/2019 |              |              | 446.86       |                      |
|      | Account Number                      | Description                    | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-040-615                         | BID:OST WASTEWATER SYSTEM UPG  | 0004423877   | 10/18/2019 | 200082       |              | 203.86       |                      |
|      | 001-040-615                         | NOTICE:DIVERT/WD PUBLIC WATERS | 004435368    | 10/29/2019 | 200096       |              | 243.00       |                      |
| 001  | SOUTHERN REGIONAL SAFETY INST       | 200441                         | 11/19/2019   | 11/13/2019 |              |              | 3,600.00     |                      |
|      | Account Number                      | Description                    | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-100-681                         | BASIC LEO ACADEMY: SLOVER,A    | 2357         | 10/29/2019 | 200007       |              | 3,600.00     |                      |
| 001  | STAPLES BUSINESS ADVANTAGE DEPT     | 200442                         | 11/19/2019   | 11/13/2019 |              |              | 1,110.38     |                      |
|      | Account Number                      | Description                    | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-090-500                         | INVISIBLE TAPE 12PK            | 3429116329   | 10/26/2019 | 200099       |              | 6.44         |                      |
|      | 001-090-500                         | WHITE CARDSTOCK 65LB (2)       | 3429116329   | 10/26/2019 | 200099       |              | 31.66        |                      |
|      | 001-090-500                         | POST-IT NOTES 3X3 YEL 12PK (2) | 3429116329   | 10/26/2019 | 200099       |              | 19.38        |                      |
|      | 001-090-500                         | BIC ATLANTIS PENS BLACK DZ (2) | 3429116329   | 10/26/2019 | 200099       |              | 15.92        |                      |
|      | 001-090-500                         | TZE231 LABEL MAKER TAPE (2)    | 3429116329   | 10/26/2019 | 200099       |              | 19.66        |                      |
|      | 001-090-500                         | TZE211 LABEL MAKER TAPE (2)    | 3429116329   | 10/26/2019 | 200099       |              | 20.68        |                      |
|      | 001-090-500                         | AAA BATTERIES 36PK             | 3429116329   | 10/26/2019 | 200099       |              | 19.29        |                      |
|      | 001-090-500                         | HP 305A BLACK TONER (2)        | 3429116329   | 10/26/2019 | 200099       |              | 207.98       |                      |
|      | 001-090-500                         | HP 305A COLOR TONER 3PK        | 3429116329   | 10/26/2019 | 200099       |              | 323.99       |                      |
|      | 001-090-500                         | STORAGE CLIPBOARD GRAY         | 3429116329   | 10/26/2019 | 200099       |              | 9.39         |                      |
|      | 001-090-500                         | LIQUID HIGHLIGHTERS AST 5PK    | 3429116329   | 10/26/2019 | 200099       |              | 3.15         |                      |
|      | 001-040-500                         | SHARPIE PENS 12PK              | 3429116329   | 10/26/2019 | 200099       |              | 17.54        |                      |
|      | 001-040-500                         | CS COPY PAPER (10)             | 3430215996   | 11/02/2019 | 200127       |              | 415.30       |                      |
| 001  | BARNEYS POLICE AND HUNTING SUPPLIES | 200444                         | 11/19/2019   | 11/13/2019 |              |              | 370.00       |                      |
|      | Account Number                      | Description                    | Invoice #    | Date       | P.O.         | Amount       |              |                      |
|      | 001-100-559                         | TARGET FULL SILHOUETTE (500)   | 32217        | 10/01/2019 | 200009       |              | 250.00       |                      |
|      | 001-100-559                         | TARGET Q-FBI STYLE (200)       | 32217        | 10/01/2019 | 200009       |              | 100.00       |                      |
|      | 001-100-559                         | SHIPPING                       | 32217        | 10/01/2019 | 200009       |              | 20.00        |                      |



| Fund       | Name of Claimant               | Trans #                        | Release Date | Claim Date | Claim Number     | Check Number | Claim Amount | Approved/Disapproved |
|------------|--------------------------------|--------------------------------|--------------|------------|------------------|--------------|--------------|----------------------|
| 001        | CUPIT SIGNS INC                | 200445                         | 11/19/2019   | 11/13/2019 |                  |              |              |                      |
|            | Account Number                 | Description                    |              | Invoice #  | Date             | P.O.         | 160.00       |                      |
|            | 001-090-638                    | 12" DECALS W/CITY LOGO (10)    |              | 31718A     | 11/12/2019       | 200155       | Amount       | 160.00               |
| 001        | GRAFIX SHOPPE                  | 200447                         | 11/19/2019   | 11/13/2019 |                  |              |              |                      |
|            | Account Number                 | Description                    |              | Invoice #  | Date             | P.O.         | 48.00        |                      |
|            | 001-100-638                    | PS REAR REFLECT GRAPHICS       |              | 130847     | 11/01/2019       | 200117       | Amount       | 30.00                |
|            | 001-100-638                    | SHIPPING: U #9                 |              | 130847     | 11/01/2019       | 200117       |              | 18.00                |
| 001        | WATCHGUARD VIDEO               | 200448                         | 11/19/2019   | 11/13/2019 |                  |              |              |                      |
|            | Account Number                 | Description                    |              | Invoice #  | Date             | P.O.         | 152.00       |                      |
|            | 001-100-639                    | REPAIR BODY CAMERA: LABOR      |              | INVOO19729 | 10/28/2019       | 200087       | Amount       | 122.00               |
|            | 001-100-639                    | SHIPPING                       |              | INVOO19729 | 10/28/2019       | 200087       |              | 30.00                |
| 001        | APOSTC LAW ENFORCEMENT ACADEMY | 200449                         | 11/19/2019   | 11/13/2019 |                  |              |              |                      |
|            | Account Number                 | Description                    |              | Invoice #  | Date             | P.O.         | 30.00        |                      |
|            | 001-100-681                    | AWARENESS LE CRS: ALEXANDER, C |              | 12132019   | 11/12/2019       | 200085       | Amount       | 30.00                |
| 001        | GLOCK PROFESSIONAL INC         | 200450                         | 11/19/2019   | 11/13/2019 |                  |              |              |                      |
|            | Account Number                 | Description                    |              | Invoice #  | Date             | P.O.         | 350.00       |                      |
|            | 001-100-681                    | GLOCK OPERATOR CRS: BOND, LEE  |              | T100131826 | 10/31/2019       | 200156       | Amount       | 350.00               |
| 001        | AXON ENTERPRISE INC            | 200451                         | 11/19/2019   | 11/13/2019 |                  |              |              |                      |
|            | Account Number                 | Description                    |              | Invoice #  | Date             | P.O.         | 300.00       |                      |
|            | 001-100-559                    | SP CARTRIDGE BATT PK, X26 (6)  |              | SI-1619432 | 10/28/2019       | 200089       | Amount       | 300.00               |
| 001        | ONEFACE LLC                    | 200455                         | 11/19/2019   | 11/13/2019 |                  |              |              |                      |
|            | Account Number                 | Description                    |              | Invoice #  | Date             | P.O.         | 125.00       |                      |
|            | 001-100-681                    | FACIAL EXPRS CRS: LONGSTREET   |              | 000048     | 11/06/2019       | 200157       | Amount       | 125.00               |
| 001        | OCCUPATIONAL HEALTH CENTER INC | 200456                         | 11/19/2019   | 11/13/2019 |                  |              |              |                      |
|            | Account Number                 | Description                    |              | Invoice #  | Date             | P.O.         | 280.00       |                      |
|            | 001-161-604                    | PRE-EMP DRUG SCREEN: CRAGER, C |              | 189596     | 11/05/2019       | 191242       | Amount       | 60.00                |
|            | 001-022-604                    | PRE-EMP PHYSICAL: HANEY, J     |              | 189596     | 11/05/2019       | 200088       |              | 65.00                |
|            | 001-022-604                    | PRE-EMP DRUG SCREEN: HANEY, J  |              | 189596     | 11/05/2019       | 200088       |              | 30.00                |
|            | 001-100-604                    | PRE-EMP DRUG SCREEN: REID, T   |              | 189596     | 11/05/2019       | 200061       |              | 60.00                |
|            | 001-100-604                    | PRE-EMP PHYSICAL: REID, T      |              | 189596     | 11/05/2019       | 200061       |              | 65.00                |
| 001        | AUDIOWAVE INC                  | 200458                         | 11/19/2019   | 11/13/2019 |                  |              |              |                      |
|            | Account Number                 | Description                    |              | Invoice #  | Date             | P.O.         | 151.50       |                      |
|            | 001-100-638                    | WINDOW TINT: U #9              |              | A51123     | 11/05/2019       | 200116       | Amount       | 151.50               |
| 001        | SBM REPORTING LLC              | 200471                         | 11/19/2019   | 11/14/2019 |                  |              |              |                      |
|            | Account Number                 | Description                    |              | Invoice #  | Date             | P.O.         | 175.00       |                      |
|            | 001-090-698                    | 10/03/19 PLANNING MTG          |              | MB1048     | 11/07/2019       |              | Amount       | 175.00               |
| FUND TOTAL | 1 Claims                       | to                             | Checks       | 66 Total   | 85,797.22 Manual | Held         | Total        | 85,797.22            |

| Fund                  | Name of Claimant           | Trans #                          | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|----------------------------|----------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 130                   | CODY D DICKERSON           | 200475                           | 11/19/2019   | 11/15/2019 |              |              | 28,000.00    |                      |
|                       | Account Number 130-130-755 | Description                      |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       |                            | REPL FENCE, GRADE SITE: CH MAINT |              | 11142019-1 | 11/14/2019   |              | 28,000.00    |                      |
| FUND TOTAL 130 Claims | to                         | Checks                           | 1 Total      | 28,000.00  | Manual       | Held         | Total        | 28,000.00            |

| Fund                  | Name of Claimant                                        | Trans # | Release Date            | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|---------------------------------------------------------|---------|-------------------------|------------|--------------|--------------|--------------|----------------------|
| 157                   | DEMANET BITE SUITS LLC<br>Account Number<br>157-100-799 | 200454  | 11/19/2019              | 11/13/2019 |              |              | 1,590.00     |                      |
|                       |                                                         |         | Description             | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       |                                                         |         | SEMI-TRAINING BITE SUIT | 2034       | 08/28/2019   | 191147       |              | 1,590.00             |
| FUND TOTAL 157 Claims | to                                                      | Checks  | 1 Total                 | 1,590.00   | Manual       | Held         | Total        | 1,590.00             |

| Fund                     | Name of Claimant                                                                                     | Trans #                        | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|--------------------------|------------------------------------------------------------------------------------------------------|--------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 176                      | GRAND VIEW SECURITY LLC<br>Account Number<br>176-170-699                                             | 200384                         | 11/19/2019   | 10/12/2019 |              |              | 300.00       |                      |
|                          |                                                                                                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                          |                                                                                                      | ALARM MONITORING               | 11/19-11/20  | 1911011308 | 11/01/2019   |              |              | 300.00               |
| 176                      | C SPIRE WIRELESS<br>Account Number<br>176-170-605                                                    | 200392                         | 11/19/2019   | 10/12/2019 |              |              | 51.45        |                      |
|                          |                                                                                                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                          |                                                                                                      | CELL PHONE                     |              | 0030759348 | 10/31/2019   |              |              | 51.45                |
| 176                      | LOWES HOME CENTERS INC<br>Account Number<br>176-170-586<br>176-170-559<br>176-170-559<br>176-170-635 | 200393                         | 11/19/2019   | 11/12/2019 |              |              | 261.52       |                      |
|                          |                                                                                                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                          |                                                                                                      | SUPPLIES: CAMPSITE REPR        |              | 901003     | 10/04/2019   |              |              | 201.93               |
|                          |                                                                                                      | 13GAL CAN LINER (2)            |              | 911313     | 10/10/2019   |              |              | 24.66                |
|                          |                                                                                                      | CLEANING GLOVES 100CT          |              | 911313     | 10/10/2019   |              |              | 14.52                |
|                          |                                                                                                      | TERMINAL KIT: SHEP MOBILE HOME |              | 901723     | 10/18/2019   |              |              | 20.41                |
| 176                      | FUELMAN<br>Account Number<br>176-170-525                                                             | 200396                         | 11/19/2019   | 10/12/2019 |              |              | 24.28        |                      |
|                          |                                                                                                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                          |                                                                                                      | UNL FUEL                       |              | NP57206850 | 11/04/2019   |              |              | 24.28                |
| 176                      | AIRGAS USA LLC<br>Account Number<br>176-170-559<br>176-170-559                                       | 200435                         | 11/19/2019   | 11/13/2019 |              |              | 33.69        |                      |
|                          |                                                                                                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                          |                                                                                                      | OXYGEN IND 125 CG 540          |              | 9094599363 | 10/29/2019   | 200110       |              | 29.19                |
|                          |                                                                                                      | HAZMAT CHARGE                  |              | 9094599363 | 10/29/2019   | 200110       |              | 4.50                 |
| FUND TOTAL 176 Claims to |                                                                                                      | Checks                         | 5 Total      | 670.94     | Manual       | Held         | Total        | 670.94               |



| Fund                  | Name of Claimant                                          | Trans #                     | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|-----------------------------------------------------------|-----------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 304                   | SEYMOUR ENGINEERING PLLC<br>Account Number<br>304-510-763 | 200409                      | 11/19/2019   | 11/12/2019 |              |              | 13,000.00    |                      |
|                       |                                                           | Description                 |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       |                                                           | TASK #2: SELECTIVE CLRG 75% |              | 7298       | 10/28/2019   |              |              | 13,000.00            |
| 304                   | SEYMOUR ENGINEERING PLLC<br>Account Number<br>304-510-762 | 200410                      | 11/19/2019   | 11/12/2019 |              |              | 2,140.00     |                      |
|                       |                                                           | Description                 |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       |                                                           | TOPOGRAPHIC SURVEY 16.5 HRS |              | 7299       | 10/28/2019   |              |              | 2,140.00             |
| FUND TOTAL 304 Claims | to                                                        | Checks                      | 2 Total      | 15,140.00  | Manual       | Held         |              | Total 15,140.00      |

| Fund                  | Name of Claimant                                            | Trans #                       | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|-------------------------------------------------------------|-------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 306                   | GOODWYN MILLS & CAWOOD INC<br>Account Number<br>306-176-762 | 200412                        | 11/19/2019   | 11/12/2019 |              |              | 4,740.00     |                      |
|                       |                                                             | Description                   |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       |                                                             | CONSTRN DOCS: WELC CENTER PH3 |              | MOB1900114 | 11/28/2019   |              |              | 4,740.00             |
| FUND TOTAL 306 Claims | to                                                          | Checks                        | 1 Total      | 4,740.00   | Manual       | Held         | Total        | 4,740.00             |

| Fund                  | Name of Claimant           | Trans #                   | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|----------------------------|---------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 307                   | HEFLIN ENGINEERING INC     | 200415                    | 11/19/2019   | 11/12/2019 |              |              | 9,000.00     |                      |
|                       | Account Number 307-300-762 | Description               |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       |                            | BACOT PARK: PRELIM DESIGN |              | 3364       | 11/11/2019   |              |              | 9,000.00             |
| FUND TOTAL 307 Claims | to                         | Checks                    | 1 Total      | 9,000.00   | Manual       | Held         | Total        | 9,000.00             |

| Fund                  | Name of Claimant       | Trans # | Release Date             | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|------------------------|---------|--------------------------|------------|--------------|--------------|--------------|----------------------|
| 308                   | HEFLIN ENGINEERING INC | 200417  | 11/19/2019               | 11/12/2019 |              |              | 12,600.00    |                      |
|                       | Account Number         |         | Description              |            | Invoice #    | Date         | P.O.         | Amount               |
|                       | 308-176-762            |         | DESIGN PHASE (100%)      |            | 3363         | 11/11/2019   |              | 8,700.00             |
|                       | 308-176-720            |         | CONSTRUCTION PHASE (10%) |            | 3363         | 11/11/2019   |              | 2,400.00             |
|                       | 308-176-720            |         | CONSTRUCTION STAKING     |            | 3363         | 11/11/2019   |              | 1,500.00             |
| FUND TOTAL 308 Claims | to                     | Checks  | 1 Total                  | 12,600.00  | Manual       | Held         | Total        | 12,600.00            |

| Fund                  | Name of Claimant         | Trans #               | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|--------------------------|-----------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 350                   | SEYMOUR ENGINEERING PLLC | 200418                | 11/19/2019   | 11/12/2019 |              |              | 6,500.00     |                      |
|                       | Account Number           | Description           |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       | 350-721-603              | DESIGN/PERMITTING 85% |              | 7295       | 10/28/2019   |              |              | 6,500.00             |
| FUND TOTAL 350 Claims | to                       | Checks                | 1 Total      | 6,500.00   | Manual       | Held         | Total        | 6,500.00             |

| Fund                  | Name of Claimant                                          | Trans #                                  | Release Date | Claim Date        | Claim Number       | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|-----------------------------------------------------------|------------------------------------------|--------------|-------------------|--------------------|--------------|--------------|----------------------|
| 351                   | SEYMOUR ENGINEERING PLLC<br>Account Number<br>351-726-787 | 200419                                   | 11/19/2019   | 11/12/2019        |                    |              | 4,518.60     |                      |
|                       |                                                           | Description<br>RES PROJ REP-CONSTR ADMIN |              | Invoice #<br>7296 | Date<br>10/28/2019 | P.O.         | Amount       |                      |
|                       |                                                           |                                          |              |                   |                    |              | 4,518.60     |                      |
| FUND TOTAL 351 Claims | to                                                        | Checks                                   | 1 Total      | 4,518.60          | Manual             | Held         | Total        | 4,518.60             |

| Fund                  | Name of Claimant           | Trans #                   | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|----------------------------|---------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 355                   | WAGGONER ENGINEERING INC   | 200420                    | 11/19/2019   | 11/13/2019 |              |              | 81,600.00    |                      |
|                       | Account Number 355-723-762 | Description               |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       |                            | DESIGN: WTR SUPPLY & TRMT |              | 36326      | 11/07/2019   |              |              | 81,600.00            |
| FUND TOTAL 355 Claims | to                         | Checks                    | 1 Total      | 81,600.00  | Manual       | Held         | Total        | 81,600.00            |

| Fund                  | Name of Claimant         | Trans # | Release Date               | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|--------------------------|---------|----------------------------|------------|--------------|--------------|--------------|----------------------|
| 360                   | SEYMOUR ENGINEERING PLLC | 200421  | 11/19/2019                 | 11/13/2019 |              |              | 38,176.50    |                      |
|                       | Account Number           |         | Description                |            | Invoice #    | Date         | P.O.         | Amount               |
|                       | 360-726-762              |         | TOPOGRAPHIC SURVEY 80%     |            | 7297         | 10/28/2019   |              | 19,690.00            |
|                       | 360-726-762              |         | VIDEO EXISTING SWR INF 30% |            | 7297         | 10/28/2019   |              | 6,000.00             |
|                       | 360-726-762              |         | ENGINEERING DESIGN 10%     |            | 7297         | 10/28/2019   |              | 12,486.50            |
| FUND TOTAL 360 Claims | to                       | Checks  | 1 Total                    | 38,176.50  | Manual       | Held         | Total        | 38,176.50            |



| Fund | Name of Claimant                     | Trans #                         | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|------|--------------------------------------|---------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 400  | O'REILLY AUTO PARTS                  | 200329                          | 11/19/2019   | 11/01/2019 |              |              | 49.46        |                      |
|      | Account Number                       | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-638                          | 5QT MOTOR OIL (2), FILTER (2)   |              | 1978147432 | 10/22/2019   |              |              | 41.48                |
|      | 400-650-638                          | 1QT MOTOR OIL (2): MR TRUCKS    |              | 1978147432 | 10/22/2019   |              |              | 7.98                 |
| 400  | IRBY'S ANSWERING SERVICE             | 200337                          | 11/19/2019   | 11/04/2019 |              |              | 414.00       |                      |
|      | Account Number                       | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-698                          | BASE RATE: 10/30/19-11/26/19    |              | 277-103019 | 10/30/2019   |              |              | 414.00               |
| 400  | CLEARWATER SOLUTIONS LLC             | 200345                          | 11/19/2019   | 11/06/2019 |              |              | 170,690.75   |                      |
|      | Account Number                       | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-672                          | OCT 2019 OPERATION FEE          |              | GAUTIER083 | 11/01/2019   |              |              | 170,690.75           |
| 400  | WASTE MANAGEMENT OF MS-GLF COAST INC | 200371                          | 11/19/2019   | 11/08/2019 |              |              | 696.98       |                      |
|      | Account Number                       | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-698                          | ROL - OFF TIMBERLANE            |              | 4308-47684 | 11/01/2019   |              |              | 696.98               |
| 400  | LOWES HOME CENTERS INC               | 200395                          | 11/19/2019   | 11/12/2019 |              |              | 56.13        |                      |
|      | Account Number                       | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-635                          | FLUSH LEVER, TOILET KIT, GASKET |              | 901035     | 10/09/2019   |              |              | 27.53                |
|      | 400-650-635                          | DOOR ENTRY KNOB                 |              | 902566     | 10/11/2019   |              |              | 13.76                |
|      | 400-650-559                          | ROUND ROD (2), HM BLANK KEY(3)  |              | 902429     | 10/24/2019   |              |              | 14.84                |
| 400  | FUELMAN                              | 200397                          | 11/19/2019   | 10/12/2019 |              |              | 125.04       |                      |
|      | Account Number                       | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-525                          | UNL FUEL                        |              | NP57206850 | 11/04/2019   |              |              | 125.04               |
| 400  | FUELMAN                              | 200399                          | 11/19/2019   | 10/12/2019 |              |              | 86.93        |                      |
|      | Account Number                       | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-525                          | UNL FUEL                        |              | NP57240698 | 11/11/2019   |              |              | 86.93                |
| 400  | JACKSON COUNTY UTILITY AUTHORITY     | 200403                          | 11/19/2019   | 11/12/2019 |              |              | 406,739.48   |                      |
|      | Account Number                       | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-668                          | OCT 2019 TREATMENT CHGS         |              | 535        | 10/01/2019   |              |              | 190,128.00           |
|      | 400-651-668                          | FY 2018 ACTUAL FLOW ADJ         |              | 535        | 10/01/2019   |              |              | 10,731.00            |
|      | 400-651-668                          | NOV 2019 TREATMENT CHGS         |              | 564        | 11/01/2019   |              |              | 190,128.00           |
|      | 400-651-668                          | FY 2018 ACTUAL FLOW ADJ         |              | 564        | 11/01/2019   |              |              | 10,731.00            |
|      | 400-651-668                          | OCT 2019 INTEREST PENALTY       |              | 582        | 11/12/2019   |              |              | 5,021.48             |
| 400  | COGENT STRATEGIES LLC                | 200406                          | 11/19/2019   | 11/12/2019 |              |              | 7,500.00     |                      |
|      | Account Number                       | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-601                          | PROFESSIONAL FEES               |              | 1697       | 11/05/2019   |              |              | 7,500.00             |
| 400  | SOUTHERN LINC                        | 200407                          | 11/19/2019   | 11/12/2019 |              |              | 89.32        |                      |
|      | Account Number                       | Description                     |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-698                          | NOV 2019 SERV CHGS              |              | 10623134   | 11/01/2019   |              |              | 80.00                |
|      | 400-650-698                          | TAXES/FEES                      |              | 10623134   | 11/01/2019   |              |              | 9.32                 |

| Fund | Name of Claimant                    | Trans #                        | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|------|-------------------------------------|--------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 400  | MISSION COMMUNICATIONS LLC          | 200408                         | 11/19/2019   | 11/12/2019 |              |              | 1,737.00     |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-698                         | RENEWAL: ROBERT HIRAM          |              | 1034873    | 11/04/2019   |              |              | 347.40               |
|      | 400-651-698                         | RENEWAL: BAYOU PIERRE          |              | 1034873    | 11/04/2019   |              |              | 347.40               |
|      | 400-651-698                         | RENEWAL: WEST PARK             |              | 1034873    | 11/04/2019   |              |              | 347.40               |
|      | 400-651-698                         | RENEWAL: PLAYERS COVE          |              | 1034873    | 11/04/2019   |              |              | 347.40               |
|      | 400-651-698                         | RENEWAL: OCEAN ESTATES         |              | 1034873    | 11/04/2019   |              |              | 347.40               |
| 400  | SOUTHERN PIPE & SUPPLY              | 200434                         | 11/19/2019   | 11/13/2019 |              |              | 1,772.28     |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-583                         | 23-3/4 M/HOLE ONLY COVER       |              | 3362381-00 | 10/14/2019   | 191152       |              | 179.00               |
|      | 400-651-583                         | 6X1 CC SS DBL STRAP SADDLE (4) |              | 3362381-00 | 10/14/2019   | 191152       |              | 210.00               |
|      | 400-651-583                         | 3/4 CCXCTS PJ CORP STOP (4)    |              | 3362381-00 | 10/14/2019   | 191152       |              | 132.40               |
|      | 400-651-583                         | R&C MARKED SEWER (3)           |              | 3362381-00 | 10/14/2019   | 191152       |              | 600.00               |
|      | 400-651-583                         | 8 PLASTIC X8 PLASTIC CPLG (6)  |              | 3362381-00 | 10/14/2019   | 191152       |              | 90.00                |
|      | 400-651-581                         | 3/4" FIPXPIP BALL CURB LW (9)  |              | 3593390-00 | 10/29/2019   | 200107       |              | 560.88               |
| 400  | HENZE ENTERPRISES INC               | 200436                         | 11/19/2019   | 11/13/2019 |              |              | 435.00       |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-683                         | 15 CY TOPSOIL (2)              |              | 28884      | 10/29/2019   | 200105       |              | 435.00               |
| 400  | CONSOLIDATED PIPE & SUPPLY          | 200437                         | 11/19/2019   | 11/13/2019 |              |              | 400.00       |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-581                         | MEGALUG C-900/IPS (10)         |              | 3793513000 | 11/06/2019   | 200142       |              | 300.00               |
|      | 400-651-581                         | REG MJ B&G SET L/GLD (10)      |              | 3793513000 | 11/06/2019   | 200142       |              | 100.00               |
| 400  | CENTRAL PIPE SUPPLY-JACKSON         | 200438                         | 11/19/2019   | 11/13/2019 |              |              | 478.56       |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-581                         | 2"X6" BRASS STD NIPPLE (6)     |              | 1001958981 | 10/24/2019   | 200069       |              | 132.00               |
|      | 400-651-581                         | 2"X8" BRASS STD NIPPLE (5)     |              | 1001958981 | 10/24/2019   | 200069       |              | 155.00               |
|      | 400-651-581                         | 1" CTSX3" FULL CIRCLE (6)      |              | 1001958981 | 10/24/2019   | 200069       |              | 160.56               |
|      | 400-651-581                         | 2"X8" BRASS STD NIPPLE         |              | 1001958983 | 10/29/2019   | 200069       |              | 31.00                |
| 400  | STAPLES BUSINESS ADVANTAGE DEPT ATL | 200443                         | 11/19/2019   | 11/13/2019 |              |              | 149.22       |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-650-500                         | 2020 15X22 WALL CALENDAR       |              | 3429770184 | 11/01/2019   | 200120       |              | 14.27                |
|      | 400-650-500                         | 2020 7X8 MONTHLY PLANNER (5)   |              | 3429770184 | 11/01/2019   | 200120       |              | 63.85                |
|      | 400-650-500                         | 2020 22X17 DESK PAD CAL (3)    |              | 3429770184 | 11/01/2019   | 200120       |              | 14.97                |
|      | 400-650-500                         | 2020 20X30 WALL CALENDAR (3)   |              | 3429770184 | 11/01/2019   | 200120       |              | 56.13                |
| 400  | G & O SUPPLY CO, INC                | 200446                         | 11/19/2019   | 11/13/2019 |              |              | 1,610.42     |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-683                         | 24"X 20' HDPE SOLID PIPE (80)  |              | G11798     | 11/04/2019   | 200104       |              | 1,564.00             |
|      | 400-651-683                         | 24" SPLIT COUPLING             |              | G11798     | 11/04/2019   | 200104       |              | 46.42                |
| 400  | MUSCO-GULFPORT 1227                 | 200452                         | 11/19/2019   | 11/13/2019 |              |              | 331.00       |                      |
|      | Account Number                      | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|      | 400-651-581                         | 12 HYD EXT 5-1/4               |              | 0652368    | 10/30/2019   | 200083       |              | 331.00               |

| Fund                  | Name of Claimant                   | Trans #                        | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|------------------------------------|--------------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 400                   | JB CUSTOM FENCE                    | 200453                         | 11/19/2019   | 11/13/2019 |              |              | 3,000.00     |                      |
|                       | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       | 400-651-584                        | 6 AND 8FT SHADOWBOX PRIV FENCE |              | 158        | 11/03/2019   | 200071       |              | 2,500.00             |
|                       | 400-651-584                        | DOUBLE GATE                    |              | 158        | 11/03/2019   | 200071       |              | 250.00               |
|                       | 400-651-584                        | DEMO/HAUL OFF: SOUTH HAVEN LS  |              | 158        | 11/03/2019   | 200071       |              | 250.00               |
| 400                   | LYMAN WELL COMPANY                 | 200457                         | 11/19/2019   | 11/13/2019 |              |              | 4,800.00     |                      |
|                       | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       | 400-651-581                        | PULL & VIDEO: BEASLEY WELL     |              | 10403      | 10/30/2019   | 191217       |              | 4,800.00             |
| 400                   | AUDIOWAVE INC                      | 200459                         | 11/19/2019   | 11/13/2019 |              |              | 452.49       |                      |
|                       | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       | 400-650-702                        | 3" STEP BAR CAB LENGTH         |              | A51108     | 11/01/2019   | 200093       |              | 377.49               |
|                       | 400-650-702                        | INSTALL FEE: PROJ ADM TRUCK    |              | A51155     | 11/07/2019   | 200093       |              | 75.00                |
| 400                   | J H WRIGHT & ASSOCIATES INC        | 200460                         | 11/19/2019   | 11/13/2019 |              |              | 2,997.00     |                      |
|                       | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       | 400-651-584                        | FILL COVER PLATE ASMBLY (8)    |              | 419184     | 10/25/2019   | 191215       |              | 480.00               |
|                       | 400-651-584                        | FILL COVER O-RING ENCAP (8)    |              | 419184     | 10/25/2019   | 191215       |              | 272.00               |
|                       | 400-651-584                        | FREIGHT: LIFT STATIONS         |              | 419184     | 10/25/2019   | 191215       |              | 25.00                |
|                       | 400-651-584                        | REWIRE DUPLEX CTL PANEL:LABOR  |              | 419418     | 11/05/2019   | 200115       |              | 2,100.00             |
|                       | 400-651-584                        | SQUARE D MOTOR HEATER (6)      |              | 419279     | 10/29/2019   | 200103       |              | 120.00               |
| 400                   | SINGING RIVER ELECTRIC COOPERATIVE | 200467                         | 11/19/2019   | 11/13/2019 |              |              | 3,673.86     |                      |
|                       | Account Number                     | Description                    |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       | 400-651-631                        | LIFT STNS 17875                |              | 10192019   | 10/29/2019   |              |              | 218.50               |
|                       | 400-651-631                        | LIFT STNS 17883                |              | 10192019   | 10/29/2019   |              |              | 1,768.38             |
|                       | 400-651-631                        | LIFT STNS 17884                |              | 10192019   | 10/29/2019   |              |              | 1,686.98             |
| FUND TOTAL 400 Claims | to                                 | Checks                         | 23 Total     | 608,284.92 | Manual       | Held         | Total        | 608,284.92           |



| Fund                  | Name of Claimant                                            | Trans #                     | Release Date | Claim Date | Claim Number | Check Number | Claim Amount | Approved/Disapproved |
|-----------------------|-------------------------------------------------------------|-----------------------------|--------------|------------|--------------|--------------|--------------|----------------------|
| 404                   | DELTA SANITATION OF MS LLC<br>Account Number<br>404-677-693 | 200340                      | 11/19/2019   | 11/05/2019 |              |              | 105,153.87   |                      |
|                       |                                                             | Description                 |              | Invoice #  | Date         | P.O.         | Amount       |                      |
|                       |                                                             | OCT 2019 RES GARBAGE (6248) |              | 0001059462 | 10/31/2019   |              | 105,153.87   |                      |
| FUND TOTAL 404 Claims | to                                                          | Checks                      | 1 Total      | 105,153.87 | Manual       | Held         | Total        | 105,153.87           |

SUMMARY OF ALL FUNDS

|                     |    |        |                  |                     |      |       |              |
|---------------------|----|--------|------------------|---------------------|------|-------|--------------|
| FUND 1 Claims       | to | Checks | 66 Total         | 85,797.22 Manual    | Held | Total | 85,797.22    |
| FUND 130 Claims     | to | Checks | 1 Total          | 28,000.00 Manual    | Held | Total | 28,000.00    |
| FUND 157 Claims     | to | Checks | 1 Total          | 1,590.00 Manual     | Held | Total | 1,590.00     |
| FUND 176 Claims     | to | Checks | 5 Total          | 670.94 Manual       | Held | Total | 670.94       |
| FUND 304 Claims     | to | Checks | 2 Total          | 15,140.00 Manual    | Held | Total | 15,140.00    |
| FUND 306 Claims     | to | Checks | 1 Total          | 4,740.00 Manual     | Held | Total | 4,740.00     |
| FUND 307 Claims     | to | Checks | 1 Total          | 9,000.00 Manual     | Held | Total | 9,000.00     |
| FUND 308 Claims     | to | Checks | 1 Total          | 12,600.00 Manual    | Held | Total | 12,600.00    |
| FUND 350 Claims     | to | Checks | 1 Total          | 6,500.00 Manual     | Held | Total | 6,500.00     |
| FUND 351 Claims     | to | Checks | 1 Total          | 4,518.60 Manual     | Held | Total | 4,518.60     |
| FUND 355 Claims     | to | Checks | 1 Total          | 81,600.00 Manual    | Held | Total | 81,600.00    |
| FUND 360 Claims     | to | Checks | 1 Total          | 38,176.50 Manual    | Held | Total | 38,176.50    |
| FUND 400 Claims     | to | Checks | 23 Total         | 608,284.92 Manual   | Held | Total | 608,284.92   |
| FUND 404 Claims     | to | Checks | 1 Total          | 105,153.87 Manual   | Held | Total | 105,153.87   |
| Total for all Funds |    |        | Checks 106 Total | 1,001,772.05 Manual | Held | Total | 1,001,772.05 |

Councilman Jackson requested to pull Consent Agenda Item 2 for further discussion.  
Councilman Anderson requested to pull Consent Agenda Item 3 for further discussion.

Councilman Colledge made the motion to approve Consent Agenda Items 1 and 4-7, as presented. Councilman Jackson seconded the motion. The vote was carried unanimously.

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 253-2019**

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that Consent Agenda Items 1 and 4-7 are hereby approved.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary.

Motion was made by **Councilman Colledge**, seconded by **Councilman Jackson**, and the following vote was recorded:

**AYES:**        **Phil Torjusen**  
                  **Mary Martin**  
                  **Richard Jackson**  
                  **Casey Vaughan**  
                  **Rusty Anderson**  
                  **Adam Colledge**

**NAYS:**        **None**

**ABSENT:**     **Cameron George**

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**MAYOR**

**ATTEST:**

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**CITY CLERK**

**Passed and Adopted** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of November 19, 2019.

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 254-2019**

**WHEREAS**, Miss. Code Ann. 27-17-501 requires the governing authority of municipalities to receive a report of the privilege licenses issued during the preceding month; and

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the Privilege License Report for October 2019 is hereby received.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary for this purpose.

Motion was made by **Councilman Colledge**, seconded by **Councilman Jackson**, and the following vote was recorded:

**AYES:**        **Phil Torjusen**  
                  **Mary Martin**  
                  **Richard Jackson**  
                  **Casey Vaughan**  
                  **Rusty Anderson**  
                  **Adam Colledge**

**NAYS:**        **None**

**ABSENT:**     **Cameron George**

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**MAYOR**

**ATTEST:**

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**CITY CLERK**

**Passed and Adopted** by the Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of November 19, 2019.

|                 |                  |                                    |                   |               |
|-----------------|------------------|------------------------------------|-------------------|---------------|
|                 |                  | City of Gautier                    |                   |               |
|                 |                  | Business Registry                  |                   |               |
|                 |                  | Oct-19                             |                   |               |
| <u>ACCOUNT#</u> | <u>LICENSE #</u> | <u>BUSINESS NAME/OWNER</u>         | <u>AMOUNT</u>     | <u>STATUS</u> |
| 7               | 2020-10-0006576  | Auto Truck & Trailer Parts         | \$20.00           | Current       |
| 62              | 2020-10-0006577  | Town & Country Veterinary Hospital | \$30.00           | Current       |
| 9               | 2020-10-0006578  | Coast Construction                 | \$20.00           | Current       |
| 941             | 2020-10-0006579  | Victory Chiropractic Center        | \$20.00           | Current       |
| 8               | 2020-10-0006580  | Burger King                        | \$30.00           | Current       |
| 1185            | 2020-10-0006581  | Aztecas                            | \$60.00           | Current       |
| 1388            | 2020-10-0006582  | Auto Zone                          | \$50.00           | Current       |
| 30              | 2020-10-0006583  | Hucks Coves                        | \$51.00           | Current       |
| ★ 1624          | 2020-10-0006584  | Patricia Rhinehart/GAMP            | \$20.00           | New Business  |
| 32              | 2020-10-0006585  | Indian Point RV Resort             | \$30.00           | Current       |
| 27              | 2020-10-0006586  | Hardee's                           | \$36.00           | Current       |
| 61              | 2020-10-0006587  | MHC Trust, DBA Thousand Trails     | \$150.00          | Current       |
| 876             | 2020-10-0006588  | Redbox Automated Retail            | \$90.00           | Current       |
| 20              | 2020-10-0006589  | First Federal Savings & Loan       | \$30.00           | Current       |
| 19              | 2020-10-0006590  | Southern Oil Company, Fast Mart    | \$40.00           | Current       |
| 1234            | 2020-10-0006591  | Shoe Department                    | \$122.50          | Current       |
| 39              | 2020-10-0006592  | Magnolia Oaks Apartments           | \$20.00           | Current       |
| 1507            | 2020-10-0006593  | The MRI Center at East Lake        | \$30.00           | Current       |
| 1625            | 2020-10-0006594  | Spay Nueter Impact Project         | \$30.00           | New Business  |
| 1285            | 2020-10-0006595  | Walden Auto Repair                 | \$20.00           | Current       |
| 878             | 2020-10-0006596  | Pearson Builders                   | \$20.00           | Current       |
| 1387            | 2020-10-0006597  | Spanish Trail Lanes                | \$51.00           | Current       |
| 3               | 2020-10-0006598  | Advanced American Auto, LLC        | \$20.00           | Current       |
| 26              | 2020-10-0006599  | Whitney Bank                       | \$30.00           | Current       |
| 1626            | 2020-10-0006600  | Acme Electric LLC (New Location)   | \$20.00           | New Business  |
| 54              | 2020-10-0006601  | Spa & Tub Manufacturing            | \$32.50           | Current       |
| 50              | 2020-10-0006602  | Shanghai Restaurant                | \$35.00           | Current       |
| 1627            | 2020-10-0006603  | Wallace Apartments                 | \$20.00           | Current       |
| 1184            | 2020-10-0006604  | Toulon Apartments                  | \$30.00           | Current       |
| 1284            | 2020-10-0006605  | Clark's Attic LLC                  | \$20.00           | Current       |
| 873             | 2020-10-0006606  | Final Enviromental Service         | \$20.00           | Current       |
| 53              | 2020-10-0006607  | Sioux Bayou Arms, LLC              | \$20.00           | Current       |
| 52              | 2020-10-0006608  | Singing River Grocery              | \$40.00           | Current       |
| 1509            | 2020-11-0006609  | Allstate Insurance                 | \$20.00           | Current       |
| 1343            | 2020-11-0006610  | Mattresses of Mississippi          | \$20.00           | Current       |
| 1239            | 2020-11-0006611  | Wonder Nails & Spa                 | \$30.00           | Current       |
| 534             | 2020-09-0006612  | Belk                               | \$2,024.00        | Delinquent    |
| 91              | 2020-11-0006613  | Isle of Pines Trailer Park         | \$20.00           | Current       |
| 1394            | 2020-12-0006614  | Another Dimension Home             | \$23.80           | Delinquent    |
| 1628            | 2020-10-0006615  | Essentials Scrubs & Beyond LLC     | \$20.00           | New Business  |
| 111             | Closed           | Rustic Inn                         | \$0.00            | Closed        |
| 63              | 2020-10-0006616  | Waffle House, Inc.                 | \$60.00           | Current       |
| 23              | 2020-10-0006617  | Gautier Aniaml Clinic              | \$20.00           | Current       |
| 1629            | 2020-10-0006618  | Roma Italian Restaurant            | \$45.00           | New Business  |
| 1177            | 2020-10-0006619  | Firestone of Gautier               | \$20.00           | Current       |
| 1453            | 2020-11-0006620  | Divine Inspirations                | \$30.00           | Current       |
| 1505            | 2020-10-0006621  | Kay Lynn Salon                     | \$20.00           | Current       |
| 1506            | 2020-10-0006622  | HII Family Vision Center           | \$20.00           | Current       |
| 278             | 2020-10-0006623  | Mowa Development, LLC              | \$30.00           | Current       |
|                 |                  | <b>Total</b>                       | <b>\$3,660.80</b> |               |
|                 |                  |                                    |                   |               |
|                 |                  | New Business                       | 5                 |               |
|                 |                  | Transient Vendor                   | 0                 |               |
|                 |                  | Closed Business                    | 1                 |               |
|                 |                  | Delinquent Renewals Issued         | 2                 |               |

\* Great American Market Place\*



There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**RESOLUTION NUMBER 039-2019**

**WHEREAS**, the Recreation Department has made a request for road closure of William Payne Blvd. on December 7, 2019; and

**WHEREAS**, the purpose of the road closure is to conduct the 2019 Lights and Lagniappe on the Bayou Firework Show; and

**WHEREAS**, pursuant to Miss. Code Ann. 21-27-3, municipalities have full jurisdiction over city streets; and

**WHEREAS**, pursuant to that jurisdiction, cities may close public streets temporarily for public purposes, e.g., parades, festivals, regulation of traffic or other valid purposes under the police power; and

**WHEREAS**, this authority would include the ability to temporarily close streets to prevent injury to, destruction of, or interference with public or private property, based upon a finding of necessity; and

**WHEREAS**, the Mayor and Members of Council hereby find that closure of the relevant public street for the time period requested is necessary to prevent injury to, destruction of, or interference with public or private property;

**NOW THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of Gautier, Mississippi that the request for road closure of William Payne Blvd. on December 7<sup>th</sup> for the Lights and Lagniappe on the Bayou Firework Show is hereby approved.

**BE IT, FURTHER RESOLVED** that associated traffic and crowd control is hereby approved, subject to the discretion and judgment of the Police Chief;

**BE IT, FURTHER RESOLVED** that the Council authorizes the City Manager or Clerk to execute all documents necessary for this purpose.

The motion to approve the foregoing resolution was made by **Councilman Colledge**, seconded by **Councilman Jackson**, and the following vote was recorded:

**AYES:**        **Phil Torjusen**  
                  **Mary Martin**  
                  **Richard Jackson**  
                  **Casey Vaughan**  
                  **Rusty Anderson**  
                  **Adam Colledge**

**NAYS:**        **None**

**ABSENT:**     **Cameron George**

**WHEREUPON**, the Mayor and Members of the Council of the City of Gautier, Mississippi, declared the motion carried and the Resolution adopted this the 19<sup>th</sup> day of November, 2019.

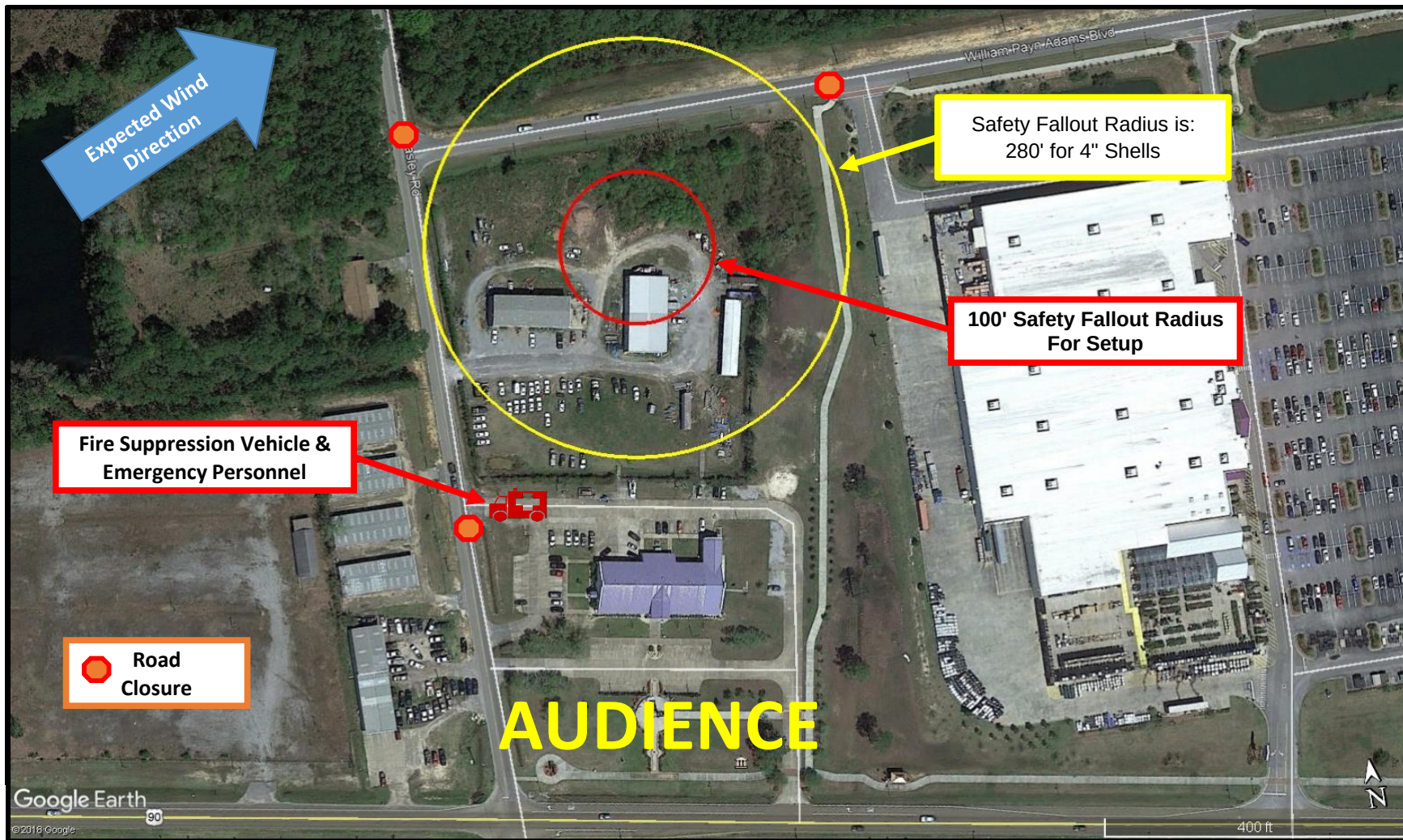
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**MAYOR**

**ATTEST:**

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**CITY CLERK**



Customer: City of Gautier  
 Show Date: Saturday, December 7, 2019  
 Show Address: 3330 Highway 90, Gautier, MS 39553  
 Show Site Lat / Long:  
 Show Time: 6:00 PM  
 Rain Date: NA

Show Name: Christmas Light the Night  
 Maximum Shell Size: 4"  
 Safety Fallout Radius: 280'  
 Storage Required: No  
 Diagram Created: 10/30/19  
 Diagram Created By: TLF

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**RESOLUTION NUMBER 040-2019**

**WHEREAS**, Gautier Elementary has made a request that the City waive the deposit fee in the amount of \$100 and rental fee in the amount of \$150 for use of the Gautier Senior Center for the Fall Fundraiser limo ride pizza party; and

**WHEREAS**, the City has authority to donate funds, equipment, or in-kind services to any school district within the bounds of the city limits; and

**WHEREAS**, the Mayor and Members of the Council of the City of Gautier, Mississippi, have determined that this event assists the voluntary character development of the school district;

**BE IT RESOLVED**, by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the request by the Gautier Elementary Faculty and Staff to waive the deposit fee in the amount of \$100 and rental fee in the amount of \$150 at Gautier Senior Center for the Fall Fundraiser limo ride and pizza party for the Gautier Elementary students is hereby authorized.

**BE IT FURTHER RESOLVED**, that the City Manager or City Clerk is authorized to execute any and all documents necessary.

Motion made by **Councilman Colledge**, seconded by **Councilman Jackson** and the following vote was recorded:

**AYES:**       **Phil Torjusen**  
                  **Mary Martin**  
                  **Richard Jackson**  
                  **Casey Vaughan**  
                  **Rusty Anderson**  
                  **Adam Colledge**

**NAYS:**       **None**

**ABSENT:**    **Cameron George**

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**MAYOR**

**ATTEST:**

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**CITY CLERK**

**Passed and Adopted** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of November 19, 2019.

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** Chassity Bilbo, Recreation Director  
**Date:** 11/12/2019  
**Subject:** Approval to waive the deposit in the amount of (\$100.00) and rental fee in the amount of (\$150.00) for the use of the Gautier Senior Center for Gautier Elementary students Fall fundraiser limo ride pizza party

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**REQUEST:**

The Recreation Department has received a request from Gautier Elementary to waive the deposit in the amount of (\$100.00) and rental fee in the amount of (\$150.00) for the use of the Gautier Senior Center for the Fall fundraiser limo ride pizza party for Gautier Elementary students on November 22, 2019.

**BACKGROUND:**

Gautier Elementary is in the process of planning the Fall fundraiser limo ride pizza party and are in need of a location to host this event.

**DISCUSSION:**

To make this celebration a success, Gautier Elementary is in need of a location to host this worthwhile event. Gautier Elementary is in the Pascagoula-Gautier District (PGSD) that has campuses that serve the cities of Gautier and Pascagoula, MS.

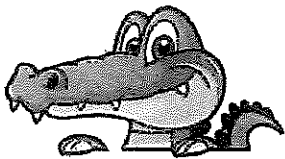
**RECOMMENDATION:**

The Recreation Department recommends that City Council waive the deposit in the amount of (\$100.00) and rental fee in the amount of (\$150.00) for the Gautier Senior Center for Gautier Elementary Fall fundraiser limo ride pizza party.

The City Council may:

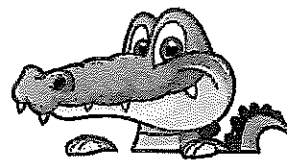
1. Approve to waive the deposit in the amount of (\$100.00) and rental fee in the amount of (\$150.00) for the Gautier Senior Center for Gautier Elementary Fall fundraiser limo ride pizza party.; or
2. Not approve to waive the deposit in the amount of (\$100.00) and rental fee in the amount of (\$150.00) Gautier Senior Center for the Gautier Senior Center for Gautier Elementary Fall fundraiser limo ride pizza party.

**ATTACHMENTS:**



  
**Gautier Elementary School**

505 Magnolia Tree Drive, Gautier, MS 39553



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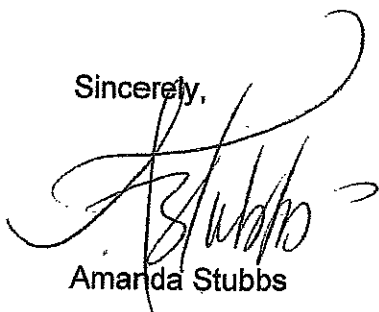
October 25, 2019

Dear Councilman Vaughn

My name is Amanda Stubbs. I am the PTO Vice President at Gautier Elementary School. We have been busy with our fall fundraiser at GES. Part of the incentive for students meeting the requirements is a limo ride & pizza party. Unfortunately, we do not have a pizza location in the city that can accommodate our students as well as their regular customers.

We would like to request the use of the Gautier Senior Center on November 22, 2019. Our eligible students will be treated to a limo ride around the local area and then, if approved, to the Gautier Senior Center for pizza before returning to school. Your help on this matter is truly appreciated. We will ensure the building is returned to proper status upon leaving. We anticipate having all students served by 2:00 and can then begin clean-up. Thank you in advance for your help and attention on this matter.

Sincerely,



Amanda Stubbs

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 255-2019**

**WHEREAS**, HUB International currently serves as the City's "Broker of Record" in regards to Property and Casualty Insurance; and

**WHEREAS**, HUB International has negotiated optional property coverage for utility infrastructure with numerous insurance providers and presented the best rate and coverage options to the City Manager for approval; and

**WHEREAS**, the City has determined that insuring the water treatment plant and eight (8) municipal wells satisfies the requirements of both the 2018 and 2019 Bond Resolutions and is the most economically feasible option; and

**WHEREAS**, the total premium including terrorism option to provide coverage for the water treatment plant and eight (8) municipal wells is \$45,968.86;

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi that the proposal received from Colony Insurance Company to purchase optional property coverage to insure the water treatment plant and eight (8) municipal wells, as presented, is hereby approved.

**IT IS FURTHER ORDERED** that the City Manager and City Clerk are authorized to execute any and all documents necessary for this purpose.

Motion made by **Councilman Colledge**, seconded by **Councilman Jackson** and the following vote was recorded:

**AYES:**       **Phil Torjusen**  
                  **Mary Martin**  
                  **Richard Jackson**  
                  **Casey Vaughan**  
                  **Rusty Anderson**  
                  **Adam Colledge**

**NAYS:**       **None**

**ABSENT:**   **Cameron George**

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**MAYOR**

**ATTEST:**

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**CITY CLERK**

**Passed and Adopted** by the Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of November 19, 2019.

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** LaKeisha Hill, Human Resources Generalist  
**Date:** 11/12/2019  
**Subject:** Approval of proposal for optional property coverage on Utility Infrastructure

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**REQUEST:**

Approve proposal for optional property coverage on Utility Infrastructure.

**BACKGROUND:**

HUB International currently serves as the city's "Broker of Record" in regards to Property and Casualty Insurance. HUB International has negotiated with providers and presented the best rate and coverage options to the City Manager for approval.

**DISCUSSION:**

The 2018 Bond and 2019 Bond resolutions require insurance to be carried on portions of the system that are of an insurable nature and then only in the amount carried by similar municipalities. It was found that underground lines and elevated water tanks are generally not insured by county or municipal utilities. The City also determined after much discussion with insurance professionals that it is not economically feasible to insure the lift stations. The high cost of premiums is initially cost prohibitive. Furthermore, high deductibles more or less guarantee no claim will exceed said deductibles. There is no economic benefit to be derived from insuring the water tanks and lift stations. The City has asked for and received competitive proposals to insure both the water ionization plant and the eight (8) municipal wells. Total insurance premiums including terrorism option for FY2020 will be \$45,968.86 for both policies.

**RECOMMENDATION:**

It is recommended the Gautier City Council approve the proposals for property – optional infrastructure insurance for FY 2020 on the water ionization plant and the eight (8) municipal wells and authorize payment of the same.

**ATTACHMENTS:**

1. HUB Proposal
2. Explanatory Letter





## PROPERTY – OPTIONAL INFRASTRUCTURE

### **Coverage for Wells Only – Colony Insurance Company**

Carrier: Colony  
AM Best Rating: A Excellent / IX

- \$3,850,000 (Wells Only)
- \$10k AOP Ded
- 5% (per well) subj to \$25k min for Named Storm
- Flood, Earthquake, and Storm Surge are excluded.
- \$27,623.31 – Total
- \$1,354.57 – Option Total TRIA

### **Coverage for Water Ionization Plant Only – Colony Insurance Company**

Carrier: Colony  
AM Best Rating: A Excellent / IX

- \$2,300,000 (Water Ionization Plant Only)
- \$10k AOP Ded
- 5% Subj to \$25k min for Named Storm
- Flood, Earthquake, and Storm Surge are excluded
- \$16,181.88 – Total
- \$809.10 – Option Total TRIA

### **Total Premium Wells & Water Ionization Plant**

**\$43,805.19 Includes Taxes and Fees**

\$2,163.67 Option to include Terrorism (TRIA)



November 8, 2019

Ms. Paula S. Yancey  
City Manager  
City of Gautier  
3330 Highway 90  
Gautier, MS 39553

**Re: Bond Resolution – Property All-Risk Insurance Requirement**

Dear Ms. Yancey:

I am writing to address the Bond Resolution's all-risk property insurance requirement on the portions of the System that are of an insurable nature and then only in the amount or amounts carried by similar communities.

As I stated in our meeting this past Tuesday, I have been the insurance agent for Harrison County Utility Authority for the past fifteen years. The HCUA is the authority for water and wastewater treatment operations in Harrison County and also for the cities of Biloxi, D'Iberville, Gulfport, Long Beach and Pass Christian. The HCUA does not procure property insurance coverage for their lines, lift stations or water tanks. Lines and lift stations are generally not of an insurable interest as part of water and wastewater treatment operations. We find that it is usually cost prohibitive to insure all segments of the System because of the higher associated premiums to insure all property values, in conjunction with the insurer forced implementation of higher catastrophic wind/hail deductibles for property risk exposure here on the Mississippi Gulf Coast. Also, the inherent qualities of the property values at risk will generally prevent meeting the deductible requirement of the property insurance coverage in the event of a covered cause of loss.

We procured an optional coverage offer with better pricing, terms and conditions through Colony Insurance Company on the insurable infrastructure consisting of the water wells and water ionization plant and have forwarded the property proposal for review, consideration and acceptance.

Please do not hesitate to contact me with any questions, concerns or if you need additional information.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Greg Cullom', written over a blue circular stamp or seal.

Greg Cullom, CIC, CRM  
Senior Vice President

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 256-2019**

**WHEREAS**, Miss. Code Ann. 21-15-33 requires that the minutes be adopted and approved by a majority of the members of the governing body at the next regular meeting or within thirty (30) days of the meeting they represent, whichever occurs first. Upon such approval, the minutes are valid from and after the date of the meeting; and

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the minutes from Regular Council Meeting held November 5, 2019 are hereby approved.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary for this purpose.

Motion was made by **Councilman Colledge**, seconded by **Councilman Jackson**, and the following vote was recorded:

**AYES:**           **Phil Torjusen**  
                      **Mary Martin**  
                      **Richard Jackson**  
                      **Casey Vaughan**  
                      **Rusty Anderson**  
                      **Adam Colledge**

**NAYS:**           **None**

**ABSENT:**       **Cameron George**

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**MAYOR**

**ATTEST:**

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**CITY CLERK**

**Passed and Adopted** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of November 19, 2019.

Councilman Vaughan made the motion to enter into a Lease Purchase Agreement with Motorola Solutions, as presented, and approve a \$50,000 down payment from the "Wireless Communication Funds." Councilman Jackson seconded the motion. The vote was carried unanimously.

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDER NUMBER 257-2019**

**WHEREAS**, the Gautier Police Department is seeking authorization to enter into a Lease Purchase Agreement with Motorola Solutions for purchasing thirty (30) Motorola APX 4500 mobile radios and thirty (30) Motorola APX 4000 portable radios in the amount of \$113,038.00; and

**WHEREAS**, Motorola Solutions is offering a proposal to the City of Gautier for a Lease Purchase Agreement in three options. Option 1- Lease term of three years at annual payment of \$56,046.00 at zero percent interest. Option 2- Lease term of five years, 3.67% interest, at an annual payment of \$34,348.57. Option 3- Lease term of seven years, 3.73% interest, annual payment of \$25,272.08; and

**WHEREAS**, the Gautier Police Department currently contributes to the "Wireless Communication Program" of the Mississippi Department of Public Safety. At this time, the City of Gautier has \$55,760.76 in the wireless account; and

**WHEREAS**, the Gautier Police Department would like to request \$50,000 be withdrawn from the Wireless Account and be applied as a down payment on Option 1 from Motorola Solutions proposal;

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the City of Gautier is hereby authorized the Gautier Police Department to enter into Option 1 of the a Lease Purchase Agreement at an annual payment of \$56,046.00 at zero percent interest and allow the City of Gautier to withdraw \$50,000.00 from the Wireless Communication Account to apply as a down payment.

**IT IS FURTHER ORDERED** that the City Manager or City Clerk is authorized to execute any and all documents necessary for this purpose.

Motion was made by **Councilman Vaughan**, seconded by **Councilman Jackson**, and the following vote was recorded:

**AYES:**       **Phil Torjusen**  
                  **Mary Martin**  
                  **Richard Jackson**  
                  **Casey Vaughan**  
                  **Rusty Anderson**  
                  **Adam Colledge**

**NAYS:**       **None**

**ABSENT:**     **Cameron George**

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MAYOR

ATTEST:

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CITY CLERK

**Passed and Adopted** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of November 19, 2019.

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** Danny Selover, Police  
**Date:** 11/7/2019  
**Subject:** Request City Council approval to enter into a Lease/Purchase Agreement with Motorola Solutions and approve a \$50,000 down payment from the "Wireless Communication Funds"

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**REQUEST:**

The Gautier Police Department is seeking authorization from the City Council to accept a Lease /Purchase Agreement with Motorola Solutions for purchasing thirty (30) Motorola APX 4500 mobile radios and thirty (30) Motorola APX 4000 portable radios in the amount of \$113,038.00. This purchase would replace our "End of Life" entire radio system and be capable to transition into a quality, digital talk group that all of Jackson County currently use.

**BACKGROUND:**

Motorola Solutions is offering a proposal to the City of Gautier for a Lease /Purchase Agreement in three options. Option 1 Lease term of three years at annual payment of \$56,046.00 at zero percent interest. Option 2 Lease term of five years, 3.67% interest, at annual payment of \$34,348.57. Option 3 Lease Term of seven years, 3.73% interest, annual payment of \$25,272.08. (See Attached).

**DISCUSSION:**

The Gautier Police Department has and currently do contribute to the "Wireless Communication Program" of the Mississippi Department of Public Safety. The funds collected are from certain traffic offenses our officers have issued. These funds accumulate until they are needed, such as times like this. At this time the City of Gautier has \$55,760.76 in the wireless account. The Gautier Police Department would like to request \$50,000.00 be withdrawn from this Wireless Account and be applied as a down payment on Option 1 from Motorola Solutions proposal. .

**RECOMMENDATION:**

The City Council approve entering into Option 1 of the Motorola Solutions Lease/purchase agreement and allow for the City of Gautier to withdraw \$50,000.00 from the Wireless Communication Account and apply it as a down payment to Motorola Solutions Lease/ Purchase.

**ATTACHMENTS:**

1. Correspondents
2. Consent Agenda Item 2 - Request City Council approval to enter into a Lease-Purchase Agreement with Motorola Solutions and approve a \$50,000 down paym

10/17/2019

GAUTIER, CITY OF  
P O BOX 670  
GAUTIER, MS 39553

Dear Capt. Danny Selover,

Motorola Solutions, Inc. is pleased to present GAUTIER, CITY OF with this quote for quality communications equipment and services. The development of this quote provided us the opportunity to evaluate your requirements and propose a solution to best fulfill your communications needs.

This information is provided to assist you in your evaluation process. Our goal is to provide GAUTIER, CITY OF with the best products and services available in the communications industry. Please direct any questions to Jonathan Harkey at [jonathanharkey@teamonecomm.com](mailto:jonathanharkey@teamonecomm.com).

We thank you for the opportunity to provide you with premier communications and look forward to your review and feedback regarding this quote.

Sincerely,

Jonathan Harkey

Motorola Solutions Manufacturer's Representative

# GAUTIER POLICE DEPARTMENT

3329 HIGHWAY 90 - GAUTIER, MS 39553

(228) 497-2486 Fax (228) 497-8018

To: Paula Yancey, City Manager  
From: Danny Selover, Captain of Administration  
Date: October 31, 2019  
Subject: Wireless Communication Funds

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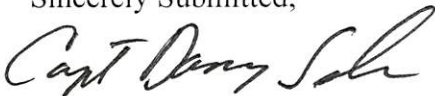
Attached please find a draft letter to the Mississippi Department of Public Safety requesting funds, \$50,000.00, contributed to the "Wireless Communication Program," to assist with the necessary funding for the purchase of 30 Motorola APX4500 mobile radios and 30 Motorola APX 4000 portable radios. Our current portable and mobile radios have passed their "End of Life Cycle" and Motorola will no longer service them nor are they producing replacement parts.

The funds in the Wireless Communication Program in Jackson accumulate from the surcharge on traffic tickets we write. The funds continue to grow in the Wireless Communication Program, our goal is to utilize the money for a down payment on a Municipal Lease-Purchase Agreement/ Tax Exempt Financing proposal from Motorola Solutions. This purchase will allow the City of Gautier radio system to operate under quality, digital capabilities, as all of Jackson County Emergency Services currently utilize. This project will help maintain the professional services our citizens are used to being provided by the City of Gautier's Police Department.

As per the Department of Public Safety's usual procedure, they require the request for funds be submitted by the Mayor of the requesting city. Therefore, I would like to request the Council's approval for Mayor Phil Torjusen to submit a request for the necessary funds needed for the cost of the radio system.

If you have any questions concerning this matter, please feel free to call me. A draft letter from the Mayor has been included for your convenience.

Sincerely Submitted,



Danny Selover

Enclosures (2)



**PROTECT AND SERVE**





# GAUTIER POLICE DEPARTMENT

3329 HIGHWAY 90 - GAUTIER, MS 39553

(228) 497-2486 Fax (228) 497-8018

October 31, 2019

Ms. Amanda McCool  
Mississippi Department of Public Safety  
P.O. Box 958  
Jackson, MS 39205

RE: Wireless Communication Fund

Dear Ms. McCool:

The City of Gautier is requesting \$50,000.00 from the available funds that we have contributed to the "Wireless Radio Communication Program." The funds will provide a down payment on a Motorola Municipal Lease/Purchase Agreement for the necessary funding for the purchase of 30 Motorola APX 4500 mobile radios and 30 Motorola APX4000 portable radios. Our current radios have passed their "End of Life Cycle" and Motorola will no longer service them in the near future nor are they producing replacement parts.

The amount requested will enable the Gautier Department to provide officers with quality digital mobile and portable radios. This will help maintain the professional services our citizens are used to being provided by the City of Gautier's Police Department.

Respectfully,

Phil Torjusen  
Mayor  
City of Gautier



***PROTECT AND SERVE***



Date: October 31, 2019

Financing proposal for: City of Gautier, MS Police Dept

Motorola Customer Financing recognizes that each opportunity presents unique issues and characteristics. Therefore, our approach involves understanding our customer's operational goals and financial objectives. Should you feel another financing structure is required, Motorola Customer Financing would welcome the opportunity to work with you.

Transaction Type: Municipal Lease-Purchase Agreement / Tax Exempt Financing

Lessor: Motorola Solutions, Inc. (or its Assignee)

Lessee: City of Gautier, MS Police Dept

Amount: \$163,038.00  
Down Payment: \$50,000.00  
Balance to Finance: \$113,038.00

Equipment: As per the Motorola Solutions equipment proposal.

Title, Insurance, & Maintenance: Title to the equipment will vest with the Lessee, and the Lessee will be responsible to insure & maintain the equipment as outlined in the lease contract.

Taxes: Personal property, sales, leasing, use, stamp, or other taxes are for the account of the Lessee.

|                                 | <u>Option One</u>                                    | <u>Option Two</u>                                    | <u>Option Three</u>                                  |
|---------------------------------|------------------------------------------------------|------------------------------------------------------|------------------------------------------------------|
| Lease Term:                     | Three Years                                          | Five Years                                           | Seven Years                                          |
| Payment Frequency:              | Annual                                               | Annual                                               | Annual                                               |
| Lease Rate Year 1-3:            | 0%                                                   | 0%                                                   | 0%                                                   |
| Lease Rate the following years: |                                                      | 3.67%                                                | 3.73%                                                |
| Lease Factor:                   | 0.333333                                             | 0.204288                                             | 0.150306                                             |
| Lease Payment:                  | \$37,679.33                                          | \$23,092.30                                          | \$16,990.24                                          |
| Payment Structure:              | Arrears                                              | Arrears                                              | Arrears                                              |
| Payment Commencement:           | First payment due one year after contract execution. | First payment due one year after contract execution. | First payment due one year after contract execution. |

Please be advised the rates above are indicative of current market conditions and should be used for INFORMATIONAL PURPOSES ONLY. The actual lease rates will be locked on a mutually agreed upon date closer to the actual order date and will reflect then-current market conditions.

Program Highlights: Lease Payments are subject to annual appropriation, so the Lessee DOES NOT pledge its full faith and credit.

Low, tax exempt financing interest rates...the most cost effective & convenient way for State & Locals to raise cash.

No pre-payment penalties provided payment is made on a regularly scheduled lease payment date.

Eliminate miscellaneous financing costs associated with bonding...NO special counsel fees, underwriter's fees, origination costs, or reserve fund requirements. Every dollar you borrow gets allocated towards your project.

Qualifications: Receipt of a properly executed documentation package.  
The interest portion of the Lease Payments shall be excludable from the Lessor's gross income pursuant to Section 103 of the Internal Revenue Code.  
Receipt of a copy of the last 2 year's audited financial statements and current year's budget from the Lessee.  
This proposal should not be construed as a commitment to finance. It is subject to final credit approval.

For questions concerning this quote, please contact: Hannah Cliff  
Motorola Solutions Credit Company LLC  
847-260-7133  
[hannah.cliff@motorolasolutions.com](mailto:hannah.cliff@motorolasolutions.com)

Billing Address:  
GAUTIER, CITY OF  
P O BOX 670  
GAUTIER, MS 39553  
US

Quote Date:10/17/2019  
Expiration Date:01/15/2020  
Quote Created By:  
Jonathan Harkey  
jonathanharkey@teamonecomm.com

Customer:  
GAUTIER, CITY OF  
Capt. Danny Selover  
dselover@gautier-ms.gov  
228-219-5143

Contract: 21726 - MISSISSIPPI-MSWIN  
Payment Terms:30 NET

| Line # | Item Number  | Description                                         | Qty | List Price | Contract Price | Ext. Sale Price |
|--------|--------------|-----------------------------------------------------|-----|------------|----------------|-----------------|
|        | PACKAGE      | APX 4000 M2 w/P25 Software                          | 30  |            |                | \$78,660.00     |
| 1      | H51UCF9PW6AN | APX 4000 7/800 MHZ MODEL<br>2 PORTABLE              | 30  | \$1,963.00 | \$959.15       | \$28,774.50     |
| 1a     | H43BJ        | ENH: TRUNKED RADIO<br>TRACE/ REMOTE MO              | 30  | \$75.00    | \$63.75        | \$1,912.50      |
| 1b     | QA01648AA    | ADD: HW KEY<br>SUPPLEMENTAL DATA                    | 30  | \$5.00     | \$4.25         | \$127.50        |
| 1c     | G996AZ       | ADD: PROGRAMMING OVER<br>P25 (OTAP)                 | 30  | \$100.00   | \$85.00        | \$2,550.00      |
| 1d     | QA06397AA    | DEL: GPS ACTIVATION APX                             | 30  | \$0.00     | \$0.00         | \$0.00          |
| 1e     | QA02756AB    | ENH: 3600 OR 9600<br>TRUNKING BAUD SINGLE<br>SYSTEM | 30  | \$1,570.00 | \$934.50       | \$28,035.00     |
| 1f     | QA00580AF    | ADD: TDMA OPERATION                                 | 30  | \$450.00   | \$382.50       | \$11,475.00     |
| 1g     | H885BK       | ADD: 3Y ESSENTIAL<br>SERVICE                        | 30  | \$90.00    | \$90.00        | \$2,700.00      |
| 2      | PMMN4069A    | MICROPHONE,IMPRES RSM,<br>3.5MM JACK, IP55          | 30  | \$133.00   | \$102.85       | \$3,085.50      |
|        | PACKAGE      | APX 4500 Dash Mount No<br>OTAP                      | 30  |            |                | \$80,100.00     |



Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of use and Purchase Terms and Conditions govern the purchase of the Products.

| Line # | Item Number  | Description                                   | Qty | List Price | Contract Price | Ext. Sale Price |
|--------|--------------|-----------------------------------------------|-----|------------|----------------|-----------------|
| 3      | M22URS9PW1AN | APX4500 7/800 MHZ                             | 30  | \$1,564.00 | \$795.55       | \$23,866.50     |
| 3a     | G24AX        | ENH: 3 YEAR ESSENTIAL SVC                     | 30  | \$131.00   | \$131.00       | \$3,930.00      |
| 3b     | QA01648AA    | ADD: HW KEY SUPPLEMENTAL DATA                 | 30  | \$5.00     | \$4.25         | \$127.50        |
| 3c     | GA00235AA    | ADD: NO GPS ANTENNA NEEDED APX                | 30  | \$0.00     | \$0.00         | \$0.00          |
| 3d     | GA00580AD    | ADD: TDMA OPERATION                           | 30  | \$450.00   | \$382.50       | \$11,475.00     |
| 3e     | QA06397AA    | DEL: GPS ACTIVATION APX                       | 30  | \$0.00     | \$0.00         | \$0.00          |
| 3f     | G142AD       | ADD: NO SPEAKER APX                           | 30  | \$0.00     | \$0.00         | \$0.00          |
| 3g     | QA02756AD    | ADD: 3600 OR 9600 TRUNKING BAUD SINGLE SYSTEM | 30  | \$1,570.00 | \$734.50       | \$22,035.00     |
| 3h     | GA00804AA    | ADD: APX O2 CH (GREY)                         | 30  | \$492.00   | \$418.20       | \$12,546.00     |
| 3i     | G444AH       | ADD: APX CONTROL HEAD SOFTWARE                | 30  | \$0.00     | \$0.00         | \$0.00          |
| 3j     | W22BA        | ADD: STD PALM MICROPHONE APX                  | 30  | \$72.00    | \$61.20        | \$1,836.00      |
| 3k     | G174AF       | ADD: ANT 3DB LOW-PROFILE 762-870              | 30  | \$43.00    | \$36.55        | \$1,096.50      |
| 3l     | G66AW        | ADD: DASH MOUNT O2 CH WWM                     | 30  | \$125.00   | \$106.25       | \$3,187.50      |
| 4      | PMPN4174A    | CHGR DESKTOP SINGLE UNIT IMPRES, US/NA        | 30  | \$76.00    | \$64.60        | \$1,938.00      |
| 5      | LSV00Q00202A | DEVICE PROGRAMING                             | 60  | \$39.00    | \$39.00        | \$2,340.00      |

Grand Total

\$163,038.00(USD)



Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of use and Purchase Terms and Conditions govern the purchase of the Products.

**From:** [Amanda McCool](#)  
**To:** [dselover@gautier-ms.gov](mailto:dselover@gautier-ms.gov)  
**Subject:** Wireless Balance  
**Date:** Friday, November 01, 2019 9:26:37 AM  
**Attachments:** [image003.png](#)

---

Captain,

The City of Gautier's available wireless balance is \$55,760.76. Please let me know if I can assist with anything further.

Thanks,

**Amanda McCool**  
Staff Officer  
Mississippi Department of Public Safety  
P. O. Box 958  
Jackson, MS 39205  
Office: (601) 987-1300



CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

**From:** kwinter@mschiefs.org  
**Sent:** Monday, May 23, 2016 4:29 PM  
**To:** delbin@gautier-ms.gov  
**Subject:** MACP NEWS AND VIEWS MAY 23rd, 2016

I am posting a section of Senate Bill 2362 from this years session. this bill is the one that sweeps all special fund monies over to the General fund. They claim to have done it for transparency and better accounting of state funds. The below section deals with section 63-9-31 which sets up the wireless technology fund account. Now if your agency and city/county did not vote by ordinance to send an additional \$10.00 assessment in on each traffic citation and have not been using those funds for wireless technology you have no worries. However, for all of the agencies that have been doing this since 1999 and depend on these funds for things like cell phones, wireless cards, radios, computers,etc. Guess what; even though this is your city/county's money, the legislature has decided to move it over to the general fund. The money is housed in a special fund at DPS/public safety planning presently and the legislators will tell you that it is simply a matter of the money being re-appropriated through a budget request by DPS. Here is the problem: The money was not appropriated in this years DPS budget either. So, your money that you have depended on to extend your budget and provide for these essential commodities and equipment will be swallowed up in the state general fund and will essentially disappear. This is a serious issue and one I would advise each of you to be speaking with your Mayor and boards and request an explanation from your legislators as well. Good Luck on getting a straight answer from your Senators or Representatives. We have not been able to get one that makes sense.

Excerpt from Senate Bill 2362:

1582 SECTION 17. Section 63-9-31, Mississippi Code of 1972, is 1583 amended as follows: 1584 63-9-31. (1) In addition to any other monetary penalties 1585 and other penalties imposed by law, any county, municipality or S. B. No. 2362 \*SS26/R497SG\* ~ OFFICIAL ~ 16/SS26/R497SG PAGE 65 1586 the Pearl River Valley Water Supply District Patrol which 1587 participates in a wireless radio communications program approved 1588 by the applicable governing authorities may assess an additional 1589 surcharge in an amount not to exceed Ten Dollars (\$10.00) on each 1590 person upon whom a court imposes a fine or other penalty for each 1591 violation of Title 63, Mississippi Code of 1972, except offenses 1592 relating to vehicular parking or registration. On all citations 1593 issued by Mississippi Highway Safety Patrol officers, a surcharge 1594 in the amount of Ten Dollars (\$10.00) shall be collected by the 1595 court and deposited as provided in subsection (2) of this section. 1596 The proceeds from the surcharge on citations issued by county and 1597 municipal law enforcement officers or the Pearl River Valley Water 1598 Supply District Patrol may be used by a county or municipality 1599 only to fund that county's or municipality's or the Pearl River 1600 Valley Water Supply District Patrol's participation in the 1601 wireless radio communications program by funding public safety 1602 wireless communications systems and related computer and 1603 communications equipment. The proceeds from the surcharge on 1604 citations issued by Mississippi Highway Safety Patrol officers 1605 shall be used as provided in subsection (2) of this section. All 1606 proceeds from the surcharge imposed by this subsection shall be 1607 deposited into a special fund in the Department of Public Safety's 1608 Office of Public Safety Planning. The Office of Public Safety 1609 Planning shall promulgate rules and procedures relating to the 1610 administration of the special fund and the disbursement of monies S. B. No. 2362 \*SS26/R497SG\* ~ OFFICIAL ~ 16/SS26/R497SG PAGE 66 1611 in the fund to participating governmental entities. The maximum 1612 amount that a governmental entity may receive from the special 1613 fund shall be an amount equal to the deposits made into the fund 1614 by that entity, less one percent (1%) to be retained by the Office 1615 of Public Safety Planning to defray the costs of administering the 1616 special fund. Interest earned on the special fund shall remain in 1617 the fund and shall be used by the Office of Public Safety Planning 1618 to further defray the costs of administering the special fund. 1619 (2) Deposits into the special fund resulting from citations 1620 issued by the Mississippi Highway Safety Patrol shall be utilized 1621 as follows: Fifty percent (50%) of the deposits into the special 1622 fund shall be used to automate the citations issued by Mississippi 1623 Highway Safety Patrol officers (including the transmittal of 1624 citations to the justice court, retrieval of the disposition from 1625 the justice court, and updating the driver's records) and fifty 1626 percent (50%) of the deposits into the special fund shall be used 1627 for the purpose of funding wireless communications and related 1628 computer equipment and computer software, subject to the approval 1629 of the Mississippi Department of Information Technology Services. 1630 (3) Approval of a wireless radio communications program must 1631 be given by the applicable governing authorities when: 1632 (a) The program includes the sharing of support 1633 facilities including, but not limited to, towers, shelters and 1634 microwave by participating entities; or S. B. No. 2362 \*SS26/R497SG\* ~ OFFICIAL ~ 16/SS26/R497SG PAGE 67 1635 (b) The program includes the establishment of a mutual 1636 aid system using

common radio frequency channels between 1637 participating entities; or 1638 (c) The program sets forth a feasible methodology that 1639 utilizes the radio frequency spectrum in an efficient manner. 1640 (4) Participating counties, municipalities, the Pearl River 1641 Valley Water Supply District Patrol and the Mississippi Highway 1642 Safety Patrol must provide notification of facilities available 1643 for interoperability to the Mississippi Department of Information 1644 Technology Services annually. 1645 (5) Counties and municipalities and the Pearl River Valley 1646 Water Supply District Patrol participating in a wireless radio 1647 communications program and the Mississippi Highway Safety Patrol 1648 must comply with competitive bidding requirements prescribed in 1649 Section 31-7-13 and are encouraged to utilize an open 1650 architecture, nonproprietary system.

1651 (6) From and after July 1, 2016, the expenses of this agency 1652 shall be defrayed by appropriation from the State General Fund and 1653 all user charges and fees authorized under this section shall be 1654 deposited into the State General Fund as authorized by law. 1655 (7) From and after July 1, 2016, no state agency shall 1656 charge another state agency a fee, assessment, rent or other 1657 charge for services or resources received by authority of this 1658 section.

This e-mail was sent from Mississippi Association Of Chiefs Of Police (kwinter@mschiefs.org) to delbin@gautier-ms.gov.



To unsubscribe, please click on this link and follow the instructions: [Unsubscribe](#)

Mississippi Association Of Chiefs Of Police, 181 CR 221 Bruce MS 38915. Phone Number: 662-897-6227, Fax Number: (662) 510-0824, Email Address: kwinter@mschiefs.org, Website : www.mschiefs.org

Councilman Vaughan made the motion to accept the monetary donation from Gautier Pride Inc. for the City of Gautier's Lights and Lagniappe on the Bayou in the amount of \$8,000. Councilwoman Martin seconded the motion. The vote was carried unanimously.

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi the following:

**ORDER NUMBER 258-2019**

**WHEREAS**, the City of Gautier will host its annual Lights and Lagniappe on the Bayou on December 7<sup>th</sup> at 3:00pm at Gautier City Hall; and

**WHEREAS**, this is an excellent opportunity for the City of Gautier to promote and bring favorable recognition to the City of Gautier and will have a great economic impact to the local businesses within the City of Gautier; and

**WHEREAS**, Gautier Pride Inc. has offered to provide a monetary donation in the amount of \$8,000.00 for the purpose of offsetting the costs incurred by the City for the Lights and Lagniappe on the Bayou; and

**WHEREAS**, the Mayor and Council Members have determined that acceptance of this donation is in the best interest of the City of Gautier.

**IT IS HEREBY ORDERED** by the Mayor and Members of the Council of the City of Gautier, Mississippi that the monetary donation of \$8,000 from Gautier Pride Inc. for the City of Gautier's Lights and Lagniappe on the Bayou held on December 7<sup>th</sup> is hereby approved and accepted.

**IT IS FURTHER ORDERED** that the City Manager and City Clerk are authorized to execute any and all documents necessary for this purpose.

Motion was made by **Councilman Vaughan**, seconded by **Councilwoman Martin**, and the following vote was recorded:

**AYES:**       **Phil Torjusen**  
                  **Mary Martin**  
                  **Richard Jackson**  
                  **Casey Vaughan**  
                  **Rusty Anderson**  
                  **Adam Colledge**

**NAYS:**       **None**

**ABSENT:**   **Cameron George**

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**MAYOR**

**ATTEST:**

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**CITY CLERK**



**Passed and Adopted** by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of November 19, 2019.

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** Chassity Bilbo, Recreation Director  
**Date:** 11/12/2019  
**Subject:** Approval to accept a monetary donation for The City of Gautier's Lights and Lagniappe on the Bayou

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**REQUEST:**

The Recreation Department requests City Council accept a monetary donation for The City of Gautier's Lights and Lagniappe on the Bayou in the amount of \$8,000 from Gautier Pride Inc.

**BACKGROUND:**

The City of Gautier will host its annual Lights and Lagniappe on the Bayou on December 7th 3:00 p.m. at Gautier City Hall. This year's festival will include a Fireworks Show presented by Pyro Shows titled "Christmas Light the Night". The City has obtained a donor to cover the cost of the show.

Festivities this year includes Elf on the Bayou, appearances by Rudolph and the Grinch, fireworks show, pet adoptions, children's craft area, pictures with Santa, winter wonderland snow party, the Pascagoula- Gautier School District Choir spreading holiday cheer, and the Annual Tree Lighting Ceremony.

**DISCUSSION:**

Pyro Shows has been providing fireworks entertainment throughout the world for almost half a century. From Stockholm, Sweden, to San Sebastian, Spain, and from Abu Dhabi in the UAE, to Taipei, Taiwan, Pyro Shows has competed in some of the most prestigious international competitions. Pyro Shows won first place in the North American Fireworks Competition in Norfolk, Virginia, and has had the honor to provide the 4th of July fireworks at the Washington Monument in Washington, D.C. for 13 times since 1995.

Pyro Shows currently provides fireworks for the Biloxi Shuckers, Scarlet Pearl Casino, and Mississippi State University.

**RECOMMENDATION:**

The Recreation Department recommends that City Council accept a monetary donation for The City of Gautier's Lights and Lagniappe on the Bayou in the amount of \$8,000 from Gautier Pride Inc.

City Council May:

1. Accept a monetary donation for The City of Gautier's Lights and Lagniappe on the Bayou in the amount of \$8,000 from Gautier Pride Inc.
2. Not accept a monetary donation for The City of Gautier's Lights and Lagniappe on the Bayou in the amount of \$8,000 from Gautier Pride Inc.

**ATTACHMENTS:**

**Councilman Vaughan** made the motion for City Attorney to send a letter to the appropriate department requesting for the City of Gautier to be removed from the Special One-Time Assistance List in New York City. **Mayor Torjusen** seconded the motion. The vote was carried unanimously. Absent was Councilman George.

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**Councilman Colledge** made the motion to enter closed session to determine if executive session is necessary and proper. **Councilwoman Martin** seconded the motion. The vote was carried unanimously. Absent was Councilman George.

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**Councilman Colledge** made the motion to enter executive session to discuss potential litigation relating to McNeil Rhoads, Brandywine litigation, potential litigation relating to the MS Sound Coalition, and possible settlement of a disputed claim relating to Waste Pro fines. **Councilwoman Martin** seconded the motion. The vote was carried unanimously. Absent was Councilman George.

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**Councilman Colledge** made the motion to authorize a contract for representation presented by Lightfoot, Franklin & White, and to authorize the initiation of litigation against McNeil Rhoads, Mueller, and any other responsible entity, pursuant to that agreement. **Councilwoman Martin** seconded the motion. The vote was carried unanimously. Absent was Councilman George.

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## FEE SHARING DISCLOSURE PURSUANT TO CONTINGENCY FEE AGREEMENT

The City of Moss Point and the City of Gautier, corporate body politics existing and organized pursuant to the laws of the State of Mississippi, which shall hereinafter be referred to as *Clients or Cities*, have retained the firm of LIGHTFOOT, FRANKLIN & WHITE LLC, a limited liability company of the State of Alabama whose principal office address is located in Birmingham Alabama, which shall hereinafter be referred to as Lightfoot to represent the Cities in a dispute with McNeil Rhoads LLC and Mueller Water Systems, Inc. **as described in the contract approved by the Moss Point Board of Alderman on November 5, 2019 (the “Contingency Fee Contract”) and approved by the Gautier City Council on \_\_\_\_\_, 2019 (the “Contingency Fee Contract”).**

This agreement and disclosure is provided to make record of the fee sharing agreements Lightfoot has entered into with Winston J. Thompson, III, Amy St Pe and Josh Danos (referred to herein as the “Cities’ Attorneys”) who will assist in the preparation and prosecution of the case on behalf of the Cities.

- 1. Responsibilities of the City’s Attorney.** The Cities’ Attorneys acknowledge that they are jointly responsible for representation of the Cities as required by Mississippi Rule of Professional Conduct 1.5. The Cities and the Cities’ Attorney have agreed that Lightfoot and Winston J. Thompson, III will have primary responsibility for the conduct of the case and that Amy St Pe and Josh Danos will provide consulting help on the case as required.
- 2. Division of Fees.** It is understood and agreed that the fees payable under the Contingent Fee Contract (40% of net recovery) will be divided between the following parties as follows:
  - a. **Lightfoot, Franklin & White—70 percent of the 40 percent net recovery.**
  - b. **Winston J. Thompson, III—15 percent of the 40 percent net recovery.**
  - c. **Amy St Pe—7.5 percent of the 40 percent net recovery.**
  - d. **Josh Danos —7.5 percent of the 40 percent net recovery.**
- 3. Governing law.** This agreement shall be interpreted and governed in accordance with the laws of the State of Mississippi.
- 4. Dispute Resolution.** In the event of a dispute over the payment of fees the parties hereto agree to resolution by The Fee Dispute Resolution Committee of the Mississippi Bar.

In witness hereof, the parties consent to be bound and affix signatures of their authorized representatives as follows:

The City of Moss Point

Mayor

The City of Gautier

Mayor

Lightfoot Franklin & White LLC

John M. Johnson, Authorized Representative

Brandon K. Essey

Winston J. Thompson, III

Amy St. Pe'

Josh Danos

## CONTINGENCY FEE AGREEMENT

This agreement is made and entered into between the City of Gautier, a corporate body politic existing and organized pursuant to the laws of the State of Mississippi, which shall hereinafter be referred to as Client and Lightfoot Franklin LLC, a limited liability company of the State of Alabama whose principal office address is located in Birmingham Alabama, which shall hereinafter be referred to as Attorneys.

1. **Scope of representation.** The Attorneys will provide competent representation to the Client in pursuing claims against McNeil Rhoads LLC and Mueller Water Systems, Inc., its subcontractors, any related entities, current or former employees, and any other potentially responsible or liable person or entity relating to or arising out of Client's Performance Contract with McNeil Rhoads to purchase automated water meters supplied by Mueller.
2. **Attorneys' authority.** The Attorneys have the power and authority to investigate, institute suit on the claims, prosecute the claims, retain experts, investigators, and other individuals whose services are necessary to pursue the claims and to take steps required or desirable for prosecution of the claim. However, no settlement agreement shall be entered into by the Attorneys absent approval of the Mayor and the Gautier City Council which shall be recorded in the minutes of the municipality.
3. **Fees.** The Attorneys shall be paid the sum of 40 percent of the net recovery obtained, including punitive damages, penalties, and interest on the Client's claims, whether by judgment, settlement, or otherwise. The net recovery includes any amounts recovered by Attorneys for Client as a result of investigation, suit, or other action prompted by or related in any way to the work of the Attorneys.
4. **Definitions.** *Net recovery* is defined to mean the total or gross recovery obtained for the client less the expenses incurred in pursuit of the claims. *Gross recovery* is defined as any cash recovery and the fair market value of any software, material or services received by the Client as part of any settlement. *Expenses* includes but is not limited to filing fees, court reporter fees, expert fees, process server fees, investigator fees, courier service, long distance charges, third party and internal copying charges, travel and lodging expenses, and the like.
5. **Expense payments.** The Attorneys will pay and advance all expenses incurred and connected with the representation. If a recovery is not received, then the Client shall not be obligated to reimburse the Attorneys for time for expenses and Attorneys agree not to seek any reimbursement from Client.
6. **Client decision making.** The Client may elect to discontinue pursuit of the claims or dismissed the action once commenced, prior to recovery or settlement. If Client elects to discontinue prosecution or dismiss the action prior to recovery or settlement ***without good cause***, Client will compensate the attorneys for time expended in pursuit of the claims and reimburse

the Attorneys for expenses. In this event, the compensation paid Attorneys shall be based on hourly rates usually charged and billed as set forth below. The attorneys listed below are all attorneys who are expected to work on this matter in some capacity.

| <b><u>Assigned Individual</u></b> | <b><u>Hourly Rate</u></b> |
|-----------------------------------|---------------------------|
| John M. Johnson                   | \$650.00                  |
| Brandon Essig                     | \$550.00                  |
| Brian Boyle                       | \$550.00                  |
| Ben Willson                       | \$350.00                  |
| Charles Stam                      | \$300.00                  |
| Zach Martin                       | \$300.00                  |
| Jordan Patterson                  | \$300.00                  |
| Susan Harper                      | \$195.00                  |

7. **Conclusiveness of agreement.** The terms of this Agreement contain all provisions related to the parties' agreement regarding the scope of the representation and the payment of fees, and oral or written representations not embodied in this Agreement shall not operate to alter or modify the Agreement.

8. **Governing law.** This Agreement shall be interpreted and governed in accordance with the laws of the State of Mississippi.

9. **Severability.** If any provision of this Agreement is deemed to be illegal, invalid, or unenforceable by a court of competent jurisdiction, then the entire agreement shall not be deemed invalid. The Agreement shall remain in full force and effect and construed to the extent practical without the invalid or enforceable provision.

10. **Assignment.** The Attorneys' duties and responsibilities pursuant to the terms of this Agreement shall not be assigned without the consent and approval of the Mayor and City Council which shall be recorded in the minutes of the City Council.

In witness hereof, the parties consent to be bound and affix signatures of their authorized representatives as follows:

The City of Gautier

Lightfoot Franklin & White LLC

By: \_\_\_\_\_  
Phil Torjusen  
Mayor

By: \_\_\_\_\_  
Brandon K. Essig  
Authorized Representative

**Councilman Colledge** made the motion to make a demand on the Brandywine Defendants to require engineered plans to be submitted to the City, and to require a permit application to be submitted by December 3, 2019, and if such actions are not taken, to direct the City Attorney to make a motion to lift the stay and proceed with litigation. **Councilman Vaughan** seconded the motion. The vote was carried unanimously. Absent was Councilman George.

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No action was taken with respect to the MS Sound Coalition.

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**Councilman Colledge** made the motion to settle a doubtful and disputed claim for Waste Pro fines in the amount of \$12,000.00. **Councilman Vaughan** seconded the motion. The vote was carried unanimously. Absent was Councilman George.

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**Councilman Colledge** made a motion to enter open session. **Councilwoman Martin** seconded the motion. The vote was carried unanimously. Absent was Councilman George.

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All actions taken in executive session were announced in open session.

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**Councilman Vaughan** made the motion to adjourn until December 3, 2019 at 6:30 pm. **Councilwoman Martin** seconded the motion. The vote was carried unanimously. Absent was Councilman George.

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**APPROVED BY:**

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**MAYOR**

**ATTEST:**

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**CITY CLERK**

Submitted for approval of the Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of December 3, 2019.



**CITY OF GAUTIER**  
**Consent Agenda Item #8**  
**Fact Sheet**

**Council Meeting:**  
**Title:**

**December 3, 2019**  
**Resolution approving closure of roads and traffic control measures as described in the application for special permit submitted by the Gautier Rotary Club on November 20, 2019.**

**Introduced by:**  
**Contact Person/Telephone**

**Chassity Bilbo 497-8000 ext. 317**

**Summary Explanation: Resolution approving closure of roads and traffic control measures as described in the application for special permit submitted by the Gautier Rotary Club on November 20, 2019.**

**EXHIBITS FOR REVIEW**

|                                |                                     |
|--------------------------------|-------------------------------------|
| <b>Resolution</b>              | <input checked="" type="checkbox"/> |
| <b>Ordinance</b>               | <input type="checkbox"/>            |
| <b>Contract</b>                | <input type="checkbox"/>            |
| <b>Minutes</b>                 | <input type="checkbox"/>            |
| <b>Plan Maps</b>               | <input type="checkbox"/>            |
| <b>Order</b>                   | <input type="checkbox"/>            |
| <b>Other</b>                   | <input type="checkbox"/>            |
| <b>Submittal Authorization</b> | <b>City Manager</b>                 |

**Staff Recommendation:**  
**Approval**

|                 |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
|-----------------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|
| Motion Made by: |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
| Torjusen        | <input type="checkbox"/> | Martin | <input type="checkbox"/> | George | <input type="checkbox"/> | Jackson | <input type="checkbox"/> | Vaughan | <input type="checkbox"/> | Anderson | <input type="checkbox"/> | Colledge | <input type="checkbox"/> |

|                 |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
|-----------------|--------------------------|--------|--------------------------|--------|--------------------------|---------|--------------------------|---------|--------------------------|----------|--------------------------|----------|--------------------------|
| Second Made by: |                          |        |                          |        |                          |         |                          |         |                          |          |                          |          |                          |
| Torjusen        | <input type="checkbox"/> | Martin | <input type="checkbox"/> | George | <input type="checkbox"/> | Jackson | <input type="checkbox"/> | Vaughan | <input type="checkbox"/> | Anderson | <input type="checkbox"/> | Colledge | <input type="checkbox"/> |

| <b>Voted as follows:</b> |                 | <b>Ayes</b>              | <b>Nays</b>              | <b>Abstained</b>         | <b>Absent</b>            |
|--------------------------|-----------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Mayor</b>             | <b>Torjusen</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>At Large</b>          | <b>Martin</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 1</b>            | <b>George</b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 2</b>            | <b>Jackson</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 3</b>            | <b>Vaughan</b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 4</b>            | <b>Anderson</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Ward 5</b>            | <b>Colledge</b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Action Taken:**

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**RESOLUTION APPROVING CLOSURE OF ROADS AND TRAFFIC CONTROL MEASURES AS DESCRIBED IN THE APPLICATION FOR SPECIAL EVENT PERMIT SUBMITTED BY THE GAUTIER ROTARY CLUB ON NOVEMBER 20, 2019**

**RESOLUTION NUMBER 000-2019**

**WHEREAS**, the Gautier Rotary Club has made a request for road closure of portions of William Payne Adams Blvd., Dolphin Dr., Gautier-Vancleave Rd., and Highway 90 as more fully described in an application for special permit submitted on November 20, 2019; and

**WHEREAS**, the purpose of the road closure is to conduct the 22<sup>nd</sup> Annual Gautier Rotary Christmas Parade on December 7<sup>th</sup>, 2019; and

**WHEREAS**, pursuant to Miss. Code Ann. 21-27-3, municipalities have full jurisdiction over city streets; and

**WHEREAS**, pursuant to that jurisdiction, cities may close public streets temporarily for public purposes, e.g., parades, festivals, regulation of traffic or other valid purposes under the police power; and

**WHEREAS**, this authority would include the ability to temporarily close streets to prevent injury to, destruction of, or interference with public or private property, based upon a finding of necessity; and

**WHEREAS**, based on the application submitted by the Gautier Rotary Club, the Mayor and Members of Council hereby find that closure of the relevant public streets for the time period requested is necessary to prevent injury to, destruction of, or interference with public or private property;

**NOW THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of Gautier, Mississippi that the request for road closure of portions of William Payne Adams Blvd., Dolphin Ave., Gautier-Vancleave Rd., and Highway 90 as more fully described in an application for special permit dated November 20, 2019 is hereby approved.

**BE IT, FURTHER RESOLVED** that associated traffic and crowd control is hereby approved, subject to the discretion and judgment of the Police Chief;

**BE IT, FURTHER RESOLVED** that the Council authorizes the City Manager or Clerk to execute all documents necessary for this purpose.

The motion to approve the foregoing resolution was made by **BLANK**, seconded by **BLANK**, and the following vote was recorded:

**AYES:**

**NAYS:**

**WHEREUPON**, the Mayor and Members of the Council of the City of Gautier, Mississippi, declared the motion carried and the Resolution adopted this the **3rd** day of December, 2019.

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**PHIL TORJUSEN, MAYOR**

**ATTEST:**

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**CITY CLERK**

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Paula Yancey, City Manager  
**From:** Chassity Bilbo, Recreation Director  
**Date:** 11/25/2019  
**Subject:** Approval for road closure and traffic control for the 22nd Annual Gautier Rotary Christmas Parade

---

**REQUEST:**

The Recreation Department requests City Council approval of a request by the Gautier Rotary Club for a road closure of portions of William Payne Adams Blvd., Dolphin Dr., Gautier-Vanceleave Rd., and Highway 90 as more fully described in the attached application for special permit submitted on November 25, 2019

**BACKGROUND:**

The Gautier Rotary Club's 22nd Annual Gautier Rotary Club Parade will be held on Saturday, December 7th at 1:00 p.m. The City has historically provided logistical services and financial support as well as traffic control and security for this event.

**DISCUSSION:**

The Gautier Rotary Club has submitted an application for special event permit for the Annual Christmas Parade.

**RECOMMENDATION:**

The Recreation Department recommends that City Council approve a request by the Gautier Rotary Club for a road closure of portions of William Payne Adams Blvd., Dolphin Dr., Gautier-Vanceleave Rd., and Highway 90 as more fully described in an application for special permit submitted on November 25, 2019. The City has determined that this event is an economic tool that brings into favorable notices the opportunities, possibilities, and resources of the City of Gautier.

City Council may:

- 1) Approve a request by the Gautier Rotary Club for a road closure of portions of William Payne Adams Blvd., Dolphin Dr., Gautier-Vanceleave Rd., and Highway 90.
- 2) Not approve a request by the Gautier Rotary Club for a road closure of portions of William Payne Adams Blvd., Dolphin Dr., Gautier-Vanceleave Rd., and Highway 90.

**ATTACHMENTS:**

1. Consent Agenda Item 8 - Road Closure Christmas Parade
2. Gautier Rotary Club Parade Request



**CITY OF GAUTIER  
APPLICATION FOR SPECIAL EVENT PERMIT**

Submit This Form to the City Clerk Office at least thirty (30) days prior to requested event.

*(Please print or type all information below)*

**Event Information:**

Date of Event: December 7, 2019 Day or Week: Saturday Starting Time: line-up 12:00 p.m. parade 1:00 p.m.

Ending Time: 2:00 p.m. Proposed Location of the Event: William Payne Adams; Dolphin; Gautier-Vancleave; Hwy. 90

Describe the type of event to be conducted: 22<sup>nd</sup> Annual Gautier Rotary Christmas Parade

Reason for Event, Demonstration or March: To attract both locals and visitors to the City of Gautier. The City of Gautier has historically provided logistical support as well as traffic control and security for this event. The total expenses for this year's Christmas parade will be around \$700.00 to \$900.00.

If Event includes a city property or streets, give proposed route:

(Street)

(Direction Turn)

(Street)

1. William Payne Adams Boulevard to;
2. Dolphin Drive (East);
3. Turn right on Gautier-Vancleave Road (South);
4. Turn right on Highway 90 (West);  
Turn right on Dolphin Drive (North)
5. End at Dolphin Drive and William Payne Adams Boulevard (the roundabout)

**ATTACH A DETAILED MAP OF THE PROPOSED ROUTE IF REQUESTING A STREET CLOSURE FOR THE EVENT. ATTACH A LIST OF THE ADJACENT BUSINESS OWNERS**

**Applicant Information:**

Organization:

Name: Gautier Rotary Club Phone: (228) 297-3063

Address: Post Office Box 241 Gautier MS 39553  
City State Zip

Type of Organization: Civic Profit: Non-Profit Federal ID# 640-76-8451  
(Religious, Civic, Social, Etc.)

Individual Making Application for Organization:

Name: Casey Vaughan Phone (Work): n/a

Address: Post Office Box 97 Phone (Cell): (228) 297-3063

City: Gautier State: MS Zip Code: 39553

Position with Organization: Parade Chairman

Individual(s) Responsible for keeping order and maintenance:

Name: \_\_\_\_\_ Phone (H): ( ) \_\_\_\_\_ (W) ( ) \_\_\_\_\_

Name: \_\_\_\_\_ Phone (W): ( ) \_\_\_\_\_ (W) ( ) \_\_\_\_\_

Public Demonstrations and Parades are covered under city of Gautier Code of Ordinances

Requirements of Applicant:

|                                                       |                                                           |                                             |
|-------------------------------------------------------|-----------------------------------------------------------|---------------------------------------------|
| <input checked="" type="checkbox"/> Security          | <input checked="" type="checkbox"/> Clean up During Event | <input checked="" type="checkbox"/> Staging |
| <input checked="" type="checkbox"/> Traffic Direction | <input checked="" type="checkbox"/> Clean up After Event  | <input type="checkbox"/> Fencing            |
| <input checked="" type="checkbox"/> Barricades        | <input checked="" type="checkbox"/> Trash Receptacles/Bag | <input type="checkbox"/> Other              |
| <input checked="" type="checkbox"/> Set Up Barricades |                                                           |                                             |

In applying for this permit, I the undersigned, as the responsible individual of the above named organization; AGREE TO HOLD THE CITY OF GAUTIER FREE AND HARMLESS OF ANY LIABILITY WHICH MAY RESULT FROM SAID EVENT, AND ACCEPT FULL RESPONSIBILITY FOR ANY SUCH LIABILITY.

Applicant's Signature: \_\_\_\_\_

Date: November 20, 2019

FOR OFFICE USE ONLY

DATE REC'D: \_\_\_\_\_ RECEIVED BY: \_\_\_\_\_  
EVENT HAS BEEN: \_\_\_\_\_ DISAPPROVED: \_\_\_\_\_  
APPROVED: \_\_\_\_\_ APPROVAL/DISAPPROVAL AUTHORITY \_\_\_\_\_  
DATE: \_\_\_\_\_

**This year's Christmas Parade is Saturday, December 7, 2019 and will roll at 1:00 p.m. Line-up will be north of Lowe's at the intersection of William Payne Adams Boulevard and Dolphin Drive starting at 12:00 p.m.**

Summary of in kind services requested:

The Gautier Rotary Club would like to request in kind services from the City of Gautier for the 2019 Christmas Parade to include: police support for safety & traffic control, clean up the streets and grass along the parade route after the parade. By 8:00 a.m. the morning of the parade: bleachers in front of the Singing River Mall property and barricades in front of the judging area.

Details:

**Chief Elbin:**

- \* Do you know how many police cars will be riding in the parade? I need to get them in the line-up. Also, will you be riding this year?
- \* Will there be support from Pascagoula or the Sheriff's department? Sometimes the Sheriff's Department comes on 4-wheelers or horses.
- \* We also need traffic and safety support.
- \* Do you think the police union would like to participate in the parade?

**Chief Jones:**

- \* As in year's past, you all let Santa Claus ride on the fire truck. Will you be able to let Santa ride on the fire truck this year?
- \* Do you think the fire fighter union would like to participate in the parade?

**City of Gautier**

- \* The city usually requests a spot for the City Council members float. Several years ago, the city employees had a float too. Will the city have one or two entries this year?
- \* By 8:00 a.m. the morning of the parade: We need three bleachers in front of the dentists' office in the southwest corner of the mall parking lot along highway 90. We need three barricades to block off the judge's stand in that same area.
- \* Also, we will need clean up after the parade as usual.
- \* Does the city currently have any Port-O-Lets? Normally, you all put two port-o-lets in the parade set-up area. That would now be on William Payne Adams Boulevard. Although with the mall closed, we may need a port-o-let near the parade route as well. Please let us know.

Thanks for your support!

We're going to have a great community event Saturday, December 7, 2019!

Casey Vaughan, Chairman  
228-297-3063

Rotary Club of Gautier, MS  
P.O. Box 241  
Gautier, MS 39553  
Fax: 228-769-2483

# Christmas Parade Route

Start & End Parade Route



**CITY OF GAUTIER, MISSISSIPPI  
STUDY AGENDA  
December 3, 2019**

**ITEM DESCRIPTION:**

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**Citizen Comments**

**City Council Comments**

**City Manager Comments**

**City Clerk Comments**

**City Attorney Comments**

**NOTES:**

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