

**Minutes of September 19, 2023
Mayor and Board of Aldermen**

MUNICIPAL DOCKET
REGULAR MEETING OF SEPTEMBER 19, 2023
THE MAYOR AND BOARD OF ALDERMEN
THE CITY OF LONG BEACH, MISSISSIPPI
5:00 O'CLOCK P.M. LONG BEACH CITY HALL, 201 JEFF DAVIS AVE.

- I. CALL TO ORDER
- II. INVOCATION AND PLEDGE OF ALLEGIANCE
- III. ROLL CALL AND ESTABLISH QUORUM
- IV. PUBLIC HEARINGS
- V. ANNOUNCEMENTS; PRESENTATIONS; PROCLAMATIONS
 - 1. Employee Anniversary Recognition
 - 2. Insurance Renewal Presentation – Tom Sawyer
- VI. AMENDMENTS TO THE MUNICIPAL DOCKET
- VII. APPROVE MINUTES:
 - 1. MAYOR AND BOARD OF ALDERMEN
 - a. September 5, 2023, Regular
 - b. September 12, 2023, Recess
 - 2. PLANNING & DEVELOPMENT COMMISSION
 - a. September 14, 2023, Regular
 - b. Appeal – Special Use Approval; Vincent G. Burke, 0 Klondyke Rd.
- VIII. APPROVE DOCKET OF CLAIMS NUMBER(S):
 - 1. 091923
- IX. UNFINISHED BUSINESS
 - 1. Contract – Andercorp; Construction Management
- X. NEW BUSINESS
 - 1. Wreaths Across America – Wendy Griffion
 - 2. Railroad Crossing Imp. Project – MDOT Form LPA-100 & Funding Letter
 - 3. Railroad Crossing Imp. Project – Selection of Consultant – Neel Schaffer, Inc.
 - 4. Contract – Formax & RJ Young; Postage Meter Lease
 - 5. Resignation Planning Commission Ward 1 – Chris Fields
 - 6. Appointment Planning Commission Ward 1 – Alderman Bennett
 - 7. Resolution – City Attorney Compensation
 - 8. Discussion – City Property on 4th Street – Alderman Brown
 - 9. Discussion – Bond Issue – Alderman Brown
 - 10. Discussion – Short Term Rentals – Alderman Parker
 - 11. Discussion – Harbor Leases – Alderman Frazer
- XI. DEPARTMENTAL BUSINESS
 - 1. MAYOR'S OFFICE
 - 2. PERSONNEL
 - a. Police Dept – Transfer (1); New Hire (1)
 - b. Fire Dept – Promotion (3); New Hire (4)
 - c. Library – Resignation PT (1)
 - 3. CITY CLERK
 - a. Revenue/Expense Report August 2023
 - b. Budget Amendments FY 23
 - 4. FIRE DEPARTMENT
 - 5. POLICE DEPARTMENT
 - a. Interlocal Agreement – Harrison County; Stonegarden Grant Program
 - b. Assistance Request – Gulf Coast Public Safety Feed the Needy
 - 6. ENGINEERING
 - a. Letter of Agreement - Water & Wastewater Master Plan; Overstreet & Assoc.
 - b. Contract – Lang Ave. Pump Station Improvements; Overstreet & Assoc.
 - c. Addendum – Pineville Rd Sidewalks Phase II; Overstreet & Assoc.
 - d. Addendum – Pineville Rd Sidewalks Phase III; Overstreet & Assoc.
 - 7. PUBLIC WORKS
 - 8. RECREATION
 - 9. BUILDING OFFICE
 - 10. HARBOR
 - 11. COMMUNITY AFFAIRS
 - a. City Landscaping
 - b. Upcoming Events
 - 12. DERELICT PROPERTIES
 - a. 625 W. Old Pass Road – Alderman McCaffrey
- XII. REPORT FROM CITY ATTORNEY
- XIII. ADJOURN (OR) RECESS

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Mayor and Board of Aldermen**

Be it remembered that a regular meeting of the Mayor and Board of Aldermen, Long Beach, Mississippi, was begun and held at 5:00 o'clock p.m., Long Beach City Hall Meeting Room, 201 Jeff Davis Avenue, in said City, it being the third Tuesday in September, 2023, and the same being the time, date and place fixed by Laws of the State of Mississippi and ordinance of the City of Long Beach for holding said meeting.

There were present and in attendance on said board and at the meeting the following named persons: Aldermen Donald Frazer (as Mayor Pro Tempore), Patrick Bennett (left early), Bernie Parker, Angie Johnson, Timothy McCaffrey, Jr., Mike Brown, Pete L. McGoey (arrived late), Deputy City Clerk Kini Gonsoulin, and City Attorney Stephen B. Simpson, Esq.

Absent the meeting was Mayor George L. Bass.

There being a quorum present sufficient to transact the business of the City, the following proceedings were had and done.

Tim Darden was recognized for 25 years of service.

Mayor Pro Tempore recognized Senior Corporate sales Executive Tom Sawyer of Brown & Brown Insurance who presented the City's Insurance Renewal. After discussion, Alderman Brown made motion seconded by Alderman McCaffrey to accept the following renewal. A complete copy of the renewal is on file in the City Clerk's Office:

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Proposal Premium Summary

Line of Business	2022-2023 Expiring Premium	2023-2024 Renewal Premium
General Liability	\$19,356.00	\$21,672.00
Employee Benefits Liability	\$381.00	\$381.00
Law Enforcement Liability	\$40,841.00	\$46,379.00
Public Entity Management Liability	\$7,768.00	\$8,856.00
Public Entity Employment Related Practices Liability	\$14,926.00	\$16,463.00
Auto Liability	\$14,926.00	\$59,561.00
Auto Physical Damage	\$17,186.00	\$26,551.00
Total Package	\$149,176.00	\$179,863.00
Property - \$5,000,000 Primary	\$366,000.00	\$490,500.00
Brokerage Fee	\$2,500.00	\$2,500.00
Taxes	\$26,716.25	\$35,742.50
Total	\$395,216.25	\$528,742.50
Property - \$5,000,000 Excess of \$5,000,000 1st Layer	\$42,500.00	\$76,702.00
Brokerage Fee	\$500.00	\$500.00
Taxes	\$3,117.50	\$5,597.15
Total	\$46,117.50	\$82,799.15
Property - \$10,000,000 Excess of \$10,000,00 2nd Layer	\$44,843.00	\$98,000.00
Fees	\$600.00	\$600.00
Taxes	\$3,294.62	\$7,148.50
Total	\$48,737.62	\$105,748.50
Stand Alone Terrorism	\$5,000.00	\$6,000.00
Brokerage Fee	\$250.00	\$250.00
Taxes	\$380.63	\$453.13
Total	\$5,630.63	\$6,703.13
Marine Operators Legal Liability	\$5,000.00	\$5,400.00
Hull & Protection & Indemnity (Vessel & Crew)	\$2,279.00	\$2,461.00
Inland Marine	\$13,320.00	\$19,656.00
Workers Compensation	\$113,765.00	\$123,262.00
Cyber Liability and Privacy Liability	\$20,040.74	\$18,245.37
Agency Fee (As allowed for by Louisiana Revised Statute RS: 22:855)	\$0.00	\$0.00
Grand Total	\$799,282.74	\$1,072,880.65

- This quote is valid for (30) days or until the proposed effective date, whichever is first. Please include if applicable.
- Minimum Earned Premium / Premium is Minimum & Deposit / Fees are fully earned.



This proposal is based upon the exposures made known to the Agency by you and contains only a general description of the coverage(s) and does not constitute a policy/contract. For complete policy information, including exclusions, limitations, and conditions, please refer to your policy. In the event of differences, the policy will prevail.

BROWN & BROWN

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Alderman Brown made motion seconded by Alderman Johnson and unanimously carried to approve the following minutes of the Mayor and Board of Aldermen, as submitted:

- September 5, 2023, Regular
- September 12, 2023 Recess

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Alderman Brown made motion seconded by Alderman McCaffrey and unanimously carried to approve the Regular minutes of the Planning & Development Commission dated September 14, 2023, as submitted.

Mayor Pro Tempore Frazer recognized Director of Operations and Owner of In the Zone Childcare Services, Vincent Burke who explained his appeal of the Planning & Development Commission’s decision to deny his Special Use Approval request on the September 14, 2023 meeting. After discussion, Alderman Bennett made motion seconded by Alderman Brown and unanimously carried to approve the Special Use request with the stipulation that the building must remain on the commercial zoned portion of the property and only the playground and parking lot would be allowed on the residential R-1 zoned portion.

Alderman McCaffrey made motion seconded by Alderman Brown and unanimously carried to approve the payment of invoices listed in Docket of Claims number 091923.

Alderman Brown made motion seconded by Alderman Parker and unanimously carried to approve the following contract with AnderCorp, LLC for Construction Management Services, and authorize the Mayor Pro Tempore to execute same:

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 **AIA** Document C132® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the First day of September in the year Two Thousand Twenty-Three
(In words, indicate day, month and year.)

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

City of Long Beach
201 Jeff Davis Avenue
Long Beach, MS 39560

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

AnderCorp, LLC
1404 24th Avenue
Suite 300
Gulfport, MS 39501

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

Construction Manager Advisor Services
Storm Recovery and Related City-Wide Construction Projects
Long Beach, MS

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

Multiple TBD

The Owner and Construction Manager 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.

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Contract Documents to be designed independently of this contract

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

TBD

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

TBD

This is the Owner's preferred budget. Construction Manager does not guarantee the budget will be met.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

TBD on a "per project" basis

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.2 Construction commencement date:

Construction commencement TBD' each separate project will have a separate commencement date

.3 Substantial Completion date or dates:

TBD on a "per project" basis

.4 Other milestone dates:

TBD

These are the Owner's preferred dates. Construction Manager does not guarantee the dates will be met.

§ 1.1.5 The Owner intends the following procurement method for the Project:
(Identify method such as competitive bid or negotiated contract.)

Projects to be competitively bid in compliance with state public bid laws; projects shall be competitively bid as single lump sum general contract, multiple bid packages within a single project, or other method if requested or required by the Owner

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:
(Identify any requirements for fast-track scheduling or phased construction and, if applicable, list number and type of bid/procurement packages.)

TBD

These are the Owner's preferences. Construction Manager does not guarantee they will be met.

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Not applicable.

§ 1.1.8 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

TBD

These are the Owner's preferences. Construction Manager does not guarantee they will be met.

§ 1.1.9 The Owner identifies the following representative in accordance with Section 5.5:
(List name, address, and other contact information.)

Kini Consoulin
City of Long Beach
201 Jeff Davis Avenue
Long Beach, MS 39560
Phone: (228)863-1556

§ 1.1.10 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address, and other contact information.)

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TBD

§ 1.1.11 The Owner shall retain the following consultants and Contractors:
(List name, legal status, address, and other contact information.)

.1 Land Surveyor:

TBD

.2 Geotechnical Engineer:

TBD

.3 Civil Engineer:

TBD

.4 Contractors, as defined in Section 1.4:

TBD

.5 Separate Contractors, as defined in Section 1.4:

TBD

.6 Other, if any:

(List any other consultants retained by the Owner.)

TBD

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Section 2.5:
(List name, address, and other contact information.)

Hunter Lipscomb, Director of Corporate Strategy
AnderCorp, LLC
1404 24th Avenue, Suite 300
Gulfport, MS 39501
Email: hunter.lipscomb@andercorp.com

§ 1.1.13 The Construction Manager's staffing plan as required under Section 3.3.3 shall include:
(List any specific requirements and personnel to be included in the staffing plan, if known.)

Onsite Construction Management Personnel (as needed):
Project Executive
Director of Corporate Strategy

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Project Manager
Project Superintendent
Project Accountant

Other Support Services (if needed):

Assistant Project Manager
Project Engineer
Area Superintendent
Safety Supervisor
BIM Coordinator/Scheduler
Director of Preconstruction
Senior Preconstruction Manager
Preconstruction Manager
Preconstruction Engineer
Quality Control Manager

§ 1.1.14 The Construction Manager's consultants retained under Basic Services, if any:
(List name, legal status, address, and other contact information of any consultants.)

TBD

§ 1.1.15 The Construction Manager's consultants retained under Supplemental Services:

TBD

§ 1.1.16 Other Initial Information on which this Agreement is based:

TBD

To the extent this section contains information as to the Owner's deadlines, budgets, or other requirements, it is understood that these are Owner preferences, and that Construction Manager does not guarantee they will be met.

§ 1.2 The Owner and Construction Manager may rely on the Initial Information, subject to the other terms hereof. Both parties, however, recognize that the Initial Information may change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Construction Manager's services, schedule for the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.4 The term "Contractors" refers to persons or entities who perform Work under contracts with the Owner that are administered by the Construction Manager and Architect. The term "Contractors" is used to refer to such persons or entities, whether singular or plural. The term does not include the Owner's own forces, or Separate Contractors, which are persons or entities who perform construction under separate contracts with the Owner not administered by the Construction Manager and Architect.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set forth in this Agreement.

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§ 2.2 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition (the "Architect's Agreement"), subject to the actual terms of the Architect's Agreement, and, subject to the terms of this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Architect's Agreement, the terms of this Agreement shall control. The Construction Manager shall not be responsible for actions taken by the Architect nor by omissions of the Architect. Notwithstanding any terms herein to the contrary, it is expressly agreed that Construction Manager shall not have any design responsibility.

§ 2.4 The Construction Manager shall coordinate its services with those services provided by the Owner, the Architect, and the Contractors, and shall cooperate with the Owner's efforts to coordinate the services provided by the Owner's other consultants and Separate Contractors. The Construction Manager shall be entitled to rely on, and shall not be responsible for, the accuracy and completeness of services and information furnished by the Owner, the Architect, and the Owner's other consultants and Separate Contractors. The Construction Manager shall provide prompt written notice to the Owner if the Construction Manager becomes aware of any error, omission, or inconsistency in such services or information.

§ 2.5 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.6 The Construction Manager, as soon as practicable after execution of the Agreement, shall notify the Owner in writing of the names and qualifications of its proposed key staff members. Within 14 days of receipt of the names and qualifications of the Construction Manager's proposed key staff members, the Owner may reply to the Construction Manager in writing, stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection. The Construction Manager shall not staff any employees on the Project to whom the Owner has made reasonable and timely objection. The Construction Manager shall not change its key staff members without the Owner's consent, which shall not be unreasonably withheld or delayed.

§ 2.7 Except with the Owner's knowledge and consent, the Construction Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Construction Manager's judgment with respect to this Project.

§ 2.8 The Construction Manager shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Construction Manager normally maintains, the Owner shall pay the Construction Manager as set forth in section 11.7.

§ 2.8.1 Commercial General Liability per Exhibit 1.

§ 2.8.2 Automobile Liability per Exhibit 1.

§ 2.8.3 The Construction Manager 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 liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.8.1 and 2.8.2, 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.

§ 2.8.4 Workers' Compensation at statutory limits and Employers Liability per Exhibit 1.

§ 2.8.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services per Exhibit 1.

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§ 2.8.6 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions.

§ 2.8.7 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.8.

§ 2.9 [intentionally deleted].

§ 2.10 [Intentionally deleted].

(List any items to be included that are not listed in Article 3 of E203-2013.)

§ 2.11 The Construction Manager shall retain all Project related documents and information it receives, and the Owner and Architect shall have access to the documents and information. The Construction Manager shall transmit the documents and information to the Owner at final completion.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in this Article 3. Services not set forth in this Article 3 are Supplemental or Additional Services. The Owner, Construction Manager, and Contractors may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

§ 3.2.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, for the Owner's approval, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work. The Construction Manager shall periodically update the Construction Management Plan, for the Owner's approval, over the course of the Project.

§ 3.2.4 The Construction Manager shall prepare and periodically update the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that affect the Project's timely completion.

§ 3.2.5 The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered in advance of construction, obtaining the required reviews and approvals of authorities having jurisdiction over the Project, and the occupancy requirements of the Owner.

§ 3.2.6 Based on the preliminary design and information prepared or provided by the Architect and other Owner consultants, the Construction Manager shall prepare, for the Architect's review and Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques, including the establishment of sufficient contingency to reasonably anticipate the development of the Project's design documents.

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§ 3.2.7 The Construction Manager shall review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; sequencing for phased construction; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. However, such recommendations shall never be deemed to be design services, but instead shall always be deemed to be only recommendations for consideration by the Owner and Architect, with the Architect responsible for all design services related to such recommendations.

§ 3.2.8 The Construction Manager shall review recommendations for systems, materials, or equipment for the impact upon cost, schedule, sequencing, constructability, and coordination among the Contractors. The Construction Manager shall discuss its findings with the Owner and the Architect, and coordinate resolution, as necessary, of any such impacts. However, such recommendations shall never be deemed to be design services, but instead shall always be deemed to be only recommendations for consideration by the Owner and Architect, with the Architect responsible for all design services related to such recommendations.

§ 3.2.9 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for further development of the design, bidding or negotiating, price escalation, and market conditions. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.2.10 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that the design, or details, adversely affect cost, scope, schedule, constructability, or quality of the Project. However, such recommendations shall never be deemed to be design services, but instead shall always be deemed to be only recommendations for consideration by the Owner and Architect, with the Architect responsible for all design services related to such recommendations.

§ 3.2.11 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 3.2.12 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors.

§ 3.2.13 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts for Construction. The Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction. However, such recommendations shall never be deemed to be design services, but instead shall always be deemed to be only recommendations for consideration by the Owner and Architect, with the Architect responsible for all design services related to such recommendations.

§ 3.2.14 The Construction Manager shall make recommendations about, and coordinate the ordering and delivery of, materials in support of the schedule, including those that must be ordered in advance of construction.

§ 3.2.15 The Construction Manager shall assist the Owner in selecting, retaining, and coordinating the professional services of surveyors, geotechnical engineers, special consultants, and construction materials testing required for the

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Project. However, such recommendations shall never be deemed to be design services, but instead shall always be deemed to be only recommendations for consideration by the Owner and Architect, with the Architect responsible for all design services related to such recommendations.

§ 3.2.16 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 3.2.17 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

§ 3.2.18 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.

§ 3.2.19 The Construction Manager, in consultation with the Owner, shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager shall assist the Owner and the Architect with the development of the Bidding Documents, which consist of bidding requirements and proposed Contract Documents. The Construction Manager, with the assistance of the Architect, shall assist the Owner in the issuance Bidding Documents to bidders and assist the Owner with any pre-bid conferences with prospective bidders. The Owner shall issue the current Project schedule with each set of Bidding Documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.20 [intentionally deleted].

§ 3.2.21 The Construction Manager, with the assistance of the Architect, shall review bids, and prepare bid analyses, and make recommendations to the Owner for the Owner's award of Contracts for Construction or rejection of bids.

§ 3.2.22 The Construction Manager, with the assistance of the Architect, shall assist the Owner in preparing the forms for the Contracts for Construction to be included in the bid documents. The Owner shall include in same the liability-limiting provisions and other risk-control provisions as recommended by Construction Manager. The Construction Manager shall advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors.

§ 3.2.23 The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Contractors. The Construction Manager shall endeavor to verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 3.2.24 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E235™-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement.

§ 3.2.25 Notwithstanding anything herein to the contrary, it is specifically agreed as follows: Though Construction Manager shall provide estimates and shall prepare schedules, it is agreed that the ultimate costs are beyond the control of the Construction Manager and that the acts and omissions of others will control whether the schedules are met. Construction Manager shall have no liability for costs exceeding Construction Manager's estimates, nor for schedules not being met, including, but not limited to, where such is due to the acts and omissions of others (including, but not limited to, Owner, Architect, and Contractors) or for events beyond the control of Construction Manager.

§ 3.3 Construction Phase

§ 3.3.1 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA

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Document A232-2019, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement.

§ 3.3.2 Subject to Section 4.2 and except as provided in Section 3.3.30, the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.3.3 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Contractors in accordance with the latest approved Project schedule and the Contract Documents.

§ 3.3.5 The Construction Manager shall review and analyze the construction schedules provided by the Contractors to update the Project schedule, incorporating the activities of the Owner, Architect, and Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Architect.

§ 3.3.6 The Construction Manager shall schedule and conduct meetings to discuss matters such as procedures, progress, coordination, and scheduling of the Work, and to develop solutions to issues identified. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Contractors.

§ 3.3.7 In accordance with the Contract Documents and the latest approved Project schedule, and utilizing information from the Contractors, the Construction Manager shall review, analyze, schedule and coordinate the overall sequence of construction and assignment of space in areas where the Contractors are performing Work.

§ 3.3.8 The Construction Manager shall coordinate all tests and inspections required by the Contract Documents or governmental authorities, observe the on-site testing and inspections, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 3.3.10 [intentionally deleted].

§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the Project and include them in the Construction Manager's progress reports.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 3.3.12.1 The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Contractors for progress and final payments.

§ 3.3.12.2 Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

1. Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for

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- Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.
- .2 Where there is more than one Contractor responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor; (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment; (3) prepare a Project Application and Certificate for Payment; (4) certify the total amount the Construction Manager determines is due all Contractors collectively; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractors are entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; (2) results of subsequent tests and inspections; (3) correction of minor deviations from the Contract Documents prior to completion; and (4) specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, procedures, or sequences for a Contractor's own Work; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate each Contractor's right to payment; or (4) ascertained how or for what purpose that Contractor has used money previously paid on account of the Contract Sum.

§ 3.3.13 The Construction Manager may obtain and review the safety programs developed by each Contractor and make recommendations for any additional safety measures to be considered in the Work of the Contractors. The Construction Manager's actions in such reviews and in making such recommendations shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work discovered by Construction Manager. The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to identify defects in the Work shall not prejudice the right to later require correction or other appropriate remedy as to said Work. The failure of the Construction Manager to reject Work shall not constitute acceptance of the Work. The Construction Manager shall endeavor to record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.22.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's

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failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations, and requests for information of the meaning and intent of the Drawings and Specifications, and provide its written recommendation. The Construction Manager shall assist in the resolution of questions that may arise.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if the proposed changes are accepted or required by the Owner, prepare Change Orders or Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.2.2.7.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 3.3.20 The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples, and other submittals from the Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractors, the Owner, or the Architect. However, such actions shall never be deemed to be design services, with the Architect responsible for all design services.

§ 3.3.20.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractors by the Contract Documents, the Construction Manager shall review those submittals for sequencing, constructability, and coordination impacts on the other Contractors. The Construction Manager shall discuss its findings with the Owner and the Architect, and coordinate resolution, as necessary, of any such impacts. However, such findings, coordination efforts, and recommendations shall never be deemed to be design services, with the Architect responsible for all design services related to such recommendations.

§ 3.3.21 The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.3.21.1 The Construction Manager shall collect, review for accuracy, and compile the Contractors' daily logs; and include them in the Construction Manager's reports prepared and submitted in accordance with section 3.3.21.2.

§ 3.3.21.2 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding submittals;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports;
- .6 Status report of nonconforming and rejected Work;
- .7 Daily logs;
- .8 Summary of all Contractors' Applications for Payment;

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- .9 Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;
- .10 Cash-flow and forecast reports;
- .11 Photographs to document the progress of the Project;
- .12 Status reports on permits and approvals of authorities having jurisdiction; and
- .13 Any other items the Owner may reasonably require;

§ 3.3.21.3 In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

- .1 Contractors' work force reports;
- .2 Equipment utilization report;
- .3 Cost summary; and
- .4 Any other items as the Owner may require;

§ 3.3.22 Utilizing the documents provided by the Contractors, the Construction Manager shall make available, at the Project site or other reasonable location, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Owner, Architect, and Contractors. Upon completion of the Project, the Construction Manager shall deliver them to the Owner.

§ 3.3.23 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.24 With the Owner's maintenance personnel, the Construction Manager shall observe the Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ 3.3.25 When the Construction Manager considers each Contractor's Work or a designated portion thereof substantially complete (per the governing terms of the applicable Contract for Construction), the Construction Manager shall, jointly with that Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.26 When the Work of all of the Contractors, or designated portion thereof, is substantially complete (per the governing terms of the applicable Contract for Construction), the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractors. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall perform an inspection to confirm the completion of the Work of the Contractors and make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection. The Construction Manager shall assist the Architect in conducting the final inspection.

§ 3.3.27 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractors: (1) certificates of insurance; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractors under the Contract Documents, including warranties and similar submittals.

§ 3.3.28 The Construction Manager shall coordinate receipt, and delivery to the Owner, of other items provided by the Contractors, such as keys, manuals, and record drawings. The Construction Manager shall forward to the Architect a

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- .5 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .6 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- .7 Consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;
- .8 Assistance to the Initial Decision Maker; or
- .9 Provide assistance in legislative and agency grant advisory services, including grant agreements and administration, and assistance in the areas of community, public relations services as directed by the Owner, in order to enhance and maintain public awareness in furtherance of the interests of the Owner

§ 4.2.3 To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Construction Manager's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Construction Manager of the Owner's determination. The Owner shall compensate the Construction Manager for the services provided prior to the Construction Manager's receipt of the Owner's notice:

- .1 Providing assistance to the Initial Decision Maker in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work.
- .2 Services required in an emergency to coordinate the activities of a Contractor or Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.15.

§ 4.2.4 Except for services required under Section 3.3.30, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work, or (2) the anticipated date of Substantial Completion identified in the Initial Information, whichever is earlier, shall be compensated as Additional Services to the extent the Construction Manager incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twenty-Four (24) months of the date of this Agreement, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner acknowledges that accelerated, phased, or fast-track design and construction provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, and as otherwise provided for herein. The Owner shall provide the Construction Manager with a copy of the scope of services in the agreement executed between the Owner and Architect, and any further modifications to the Architect's scope of services in the agreement.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid delay in the orderly and sequential progress of the Construction Manager's services.

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§ 5.6 Unless provided by the Construction Manager, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.7 Unless provided by the Construction Manager, the Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.8 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.9 [not used].

§ 5.10 The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Construction Manager in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.11 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.12 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.13 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services.

§ 5.14 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.

§ 5.15 The Owner shall communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.16 The Owner shall enter into with Contractors all necessary Contracts for Construction, on a timely basis so as to not delay the Project, and containing all terms and conditions requested by the Construction Manager, with all costs to the Owner. Before executing the Contracts for Construction, the Owner shall coordinate the Construction Manager's duties and responsibilities set forth in the Contracts for Construction with the Construction Manager's services set forth in this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

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§ 5.17 The Owner shall provide the Construction Manager access to the Project site prior to commencement of the Work and shall obligate the Contractors to provide the Construction Manager access to the Work wherever it is in preparation or progress.

§ 5.18 Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce lien rights.

§ 5.19 It is agreed that, in order for Owner to obtain the benefit of Construction Manager's services, it is critical that Owner comply (and obtain compliance by the Architect, Contractors, and all applicable others) with all recommendations, advice, instructions, and directives by Construction Manager. The Owner shall so comply and obtain such compliance, in full. The Owner shall hold harmless, defend, and indemnify Construction Manager for claims, losses, liabilities, damages, penalties, and other costs resulting from any failure to comply. Nothing in the foregoing shall change the fact the Owner shall be responsible for all payments owed to Architects, Contractors, and all applicable others. Nothing in the foregoing changes the fact the Construction Manager is an agent (disclosed) of Owner, including, but not limited to, in relation to the Architect, the Contractors, and applicable others.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's Consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget for the Cost of the Work, and the estimates of the Cost of the Work prepared by the Construction Manager, represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials; or equipment; the Contractors' methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Construction Manager.

§ 6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 6.4 If the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager, in consultation with the Architect, shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Construction Manager and Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

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§ 8.6 If the Owner chooses to revise the Project program, scope, or quality to reduce the Cost of the Work pursuant to Section 6.5.3, or if the bids or proposals received from the prospective Contractors, in the aggregate, exceed the Owner's budget for the Cost of the Work, and the Owner chooses to revise the Project program, scope, or quality to reduce the Cost of the Work, the Construction Manager shall cooperate with the Owner and Architect to develop the necessary revisions, update the cost estimate, and obtain additional bids.

ARTICLE 7 COPYRIGHTS AND LICENSES

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2019, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Construction Manager shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Construction Manager, its employees and its consultants in the performance of professional services under this Agreement, and only for claims for personal injury and property damage. The Construction Manager's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Construction Manager's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement. This indemnification obligation does not cover claims by Contractors or by the Architect.

§ 8.1.4 The Construction Manager and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Construction Manager's services, the Construction Manager may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution. Filings to protect lien rights shall not be deemed a waiver of arbitration rights.

§ 8.2.2 The Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a

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period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

- [X] Arbitration pursuant to Section 8.3 of this Agreement
- [] Litigation in a court of competent jurisdiction
- [] Other: (Specify)

If the Owner and Construction Manager 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, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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§ 8.3.4.3 The Owner and Construction Manager grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Construction Manager under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, the Construction Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Construction Manager all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager shall be compensated for expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Construction Manager, the Construction Manager may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Construction Manager terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Construction Manager for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Construction Manager's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Construction Manager terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Construction Manager the following termination fee:
(Set forth below the amount of any termination fee, or the method for determining any termination fee.)

In the event of termination for the Owner's convenience at any stage of the Project, the Construction Manager shall be entitled to receive payment for services performed, costs incurred by reason of such termination, and overhead and profit on those services and costs.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

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§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2019, General Conditions of the Contract for Construction, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager and the Architect.

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Construction Manager by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least 14 days prior to the requested dates of execution. The Construction Manager shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Construction Manager.

§ 10.6 Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall provide professional credit for the Architect and the Contractors in the Construction Manager's promotional materials for the Project. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Construction Manager or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Construction Manager's Basic Services described under Article 3, the Owner shall compensate the Construction Manager as follows:

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

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Preconstruction services to be billed in accordance with rates provided in Exhibit "A" with prior approval from the Owner and for a predetermined period of time for each individual project/task order

§ 11.1.2 For Construction Phase Services in Section 3.3:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

Construction Phase services to be provided on a "per project" basis with prior authorization from the Owner; Construction Phase services to be billed at 5.0% General Conditions/reimbursable costs on the Cost of Construction plus 5.0% fee of the Cost of the Work

§ 11.2 For the Construction Manager's Supplemental Services designated in Section 4.1.1, and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

N/A

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation.)

Cost of the Work plus 5.0% and attributable General Conditions billed in accordance with the rates provided in Exhibit "A"

§ 11.4 Compensation for Supplemental and Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager plus Five percent (5.0 %), or as follows:
(Insert amount of, or basis for computing, Construction Manager's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants are set forth below. The rates shall be adjusted in accordance with the Construction Manager's and Construction Manager's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit "A"

Employee or Category	Rate (\$0.00)
See Exhibit "A"	

§ 11.6 Compensation for Reimbursable Expenses

§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Construction Manager and the Construction Manager's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Professional photography, and presentation materials requested by the Owner;
- .8 If required by the Owner, and with the Owner's prior written approval, the Construction Manager's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the

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- expense of additional insurance coverage or limits in excess of that normally maintained by the Construction Manager's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
 - .10 Site office expenses; and
 - .11 Other similar Project-related expenditures.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants plus Five percent (5.0 %) of the expenses incurred.

§ 11.7 **Construction Manager's Insurance.** If the types and limits of coverage required in Section 2.8 are in addition to the types and limits the Construction Manager normally maintains, the Owner shall pay the Construction Manager for the additional costs incurred by the Construction Manager for the additional coverages as set forth below. *(Insert the additional coverages the Construction Manager is required to obtain in order to satisfy the requirements set forth in Section 2.8, and for which the Owner shall reimburse the Construction Manager.)*

TBD

§ 11.8 **Payments to the Construction Manager**

§ 11.8.1 **Initial Payment**

§ 11.8.1.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.8.2 **Progress Payments**

§ 11.8.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. *(Insert rate of monthly or annual interest agreed upon.)*

8.0 % Eight Percent

§ 11.8.2.2 The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, or to offset sums requested by or paid to Contractors for the cost of changes in the Work, unless the Construction Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.8.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document C132™-2019, Standard Form Agreement Between Owner and Construction Manager as Adviser
- .2 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.)

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N/A

.3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

AIA Document E235™-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:
(Insert the date of the E235-2019 incorporated into this agreement.)


Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits identified in Section 4.1.2.)

Exhibit "I" – AnderCorp Sample Certificate of Insurance
Exhibit "A" – Fee Agreement & Rate Schedule

.4 Other documents:
(List other documents, if any, forming part of the Agreement.)

TBD

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


OWNER *(Signature)*
~~George Bass, Mayor~~ Donald Frazer
(Printed name and title) Mayor Pro Tempore


CONSTRUCTION MANAGER *(Signature)*
Roy Anderson III, Chairman/CEO
(Printed name and title)

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EXHIBIT "1"



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
3/13/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Cadence Insurance (Formerly BXS Insurance) 760 Howard Avenue, 2nd floor Biloxi MS 39530	CONTACT NAME: Patty Savage PHONE (A/C, No, Ext): 8002770856 FAX (A/C, No): E-MAIL ADDRESS: patty.savage@cadenceinsurance.com														
INSURED ANDERCORP, LLC PO Box 520 Gulfport MS 39502	ANDELLC-02 <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A : Valley Forge Insurance Company</td> <td>20508</td> </tr> <tr> <td>INSURER B : Continental Insurance Company</td> <td>35289</td> </tr> <tr> <td>INSURER C : Illinois Union Insurance Company</td> <td>27960</td> </tr> <tr> <td>INSURER D : National Fire Insurance Co of Hartford</td> <td>20478</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Valley Forge Insurance Company	20508	INSURER B : Continental Insurance Company	35289	INSURER C : Illinois Union Insurance Company	27960	INSURER D : National Fire Insurance Co of Hartford	20478	INSURER E :		INSURER F :	
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INSURER F :															

COVERAGES **CERTIFICATE NUMBER: 1706851858** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		6080694813	3/15/2023	3/15/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY		6080694777	3/15/2023	3/15/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		6080694780	3/15/2023	3/15/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N <input type="checkbox"/> N/A	6080694784	3/15/2023	3/15/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER MS, AR, LA, NC E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional / Pollution Coverage		G72512492003	3/15/2023	3/15/2025	Per Claim/Aggregate \$1 Mil/\$1 Mil

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
NOTE: Umbrella is follow form the General Liability, Auto Liability and Employers Liability
 - Additional Insured including completed operations when required by written contract.
 - Waiver of Subrogation included in favor of owner/client when required by written contract.
 - Primary wording when required by written contract.
 - Cancellation notice scheduled when required by written contract.

CERTIFICATE HOLDER Sample Certificate of Insurance	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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Minutes of September 19, 2023 Mayor and Board of Aldermen

EXHIBIT "A"

FEE AGREEMENT AND RATE SCHEDULE

FEE AGREEMENT

The Construction Manager shall be paid a fee equal to Five Percent (5.0%) of:

The sum of the Cost of the Work,

- Including Cost of the Work (for both originally scoped work and change orders),
- Including compensation for reimbursable expenses,
- Less the unused portion of the Owner's contingency, and
- Less the Construction Manager's fee; and

BILLABLE RATE SCHEDULE

STAFF

The Construction Manager shall be paid General Conditions equal to Five Percent (5.0%) of the sum of the Cost of the Work, including originally scoped work and change orders, billable at the following rates:

Title	Rate (\$/hr)
1. Vice President -	\$204.70
2. Director of Gov't Affairs & Corporate Strategy -	\$194.79
3. Project Executive -	\$116.96
4. General Superintendent -	\$139.17
5. Project Superintendent -	\$107.15
6. Superintendent -	\$103.60
7. Lead Superintendent -	\$85.81
8. Area Superintendent -	\$71.58
9. Assistant Project Superintendent -	\$68.02
10. Senior Project Manager -	\$112.54
11. Project Manager -	\$84.08
12. Assistant Project Manager -	\$76.96
13. Safety Supervisor -	\$69.85
14. Quality Control Manager -	\$76.96
15. Project Engineer -	\$72.01
16. Project Accountant -	\$107.58
17. Senior Preconstruction Manager -	\$116.96
18. Preconstruction Manager -	\$101.45
19. Preconstruction Engineer -	\$59.56

Labor rates are inclusive of costs paid or incurred by the Contractor as required by law or collective bargaining agreements, and, for personnel not covered by collective bargaining agreements, rates are inclusive of cost paid or incurred by the Contractor for customary benefits provided such costs are based on wages and salaries included in the Cost of the Work. Rates are for personnel who perform activities directly related to the Project regardless of whether the personnel are working on or offsite, including hours worked while at the Contractor's home office. Rates are inclusive of the following items: payroll taxes; worker's compensation insurance; health, dental and welfare insurance; retirement; sick, bereavement, vacation and holidays; company owned vehicles; auto allowances; fuel; cell phones; and computer hardware/software.

- All miscellaneous costs including, but not limited to, materials, supplies, consumables, and fuel shall be billed at actual costs.
- All jobsite office costs, including utility connections and service, shall be billed at actual costs.
- Should additional classifications or general conditions items be needed, the rates will be submitted to the Owner for approval.
- Any additional services, materials, supplies, etc. requested by the Owner shall be billed at actual costs.

*

*

It was the consensus of the Board to establish a Harbor Communication Committee and appoint Alderman Bernie Parker, Alderman Patrick Bennett and Alderman Angie Johnson to the committee.

Alderman Parker made motion seconded by Alderman McCaffrey and unanimously carried to approve the VFW Post 3937 and American Legion Post 1995 joint Wreath Laying Ceremony on December 16, 2023 at 1:00 p.m. at the city cemetery.

**Minutes of September 19, 2023
Mayor and Board of Aldermen**

Alderman Parker made motion seconded by Alderman McCaffrey and unanimously carried to table the MDOT Form LPA-100 and funding letter for the Long Beach Railroad Crossing Grade Improvements.

Alderman Brown made motion seconded by Alderman Parker and unanimously carried to select Neel-Schaffer, Inc. as the Professional Services Consultant for Construction Engineering & Inspection Services for the City of Long Beach CSX Railroad Crossing Grade Improvements, and authorize the Mayor Pro Tempore to execute the following letter:

City of Long Beach



September 19, 2023

Mr. Chuck Starita, P.E.
District 6 LPA Engineer
Mississippi Department of Transportation
16499-B Highway 49
Saucier, MS 39574-9740

**RE: Master Services Selection for Construction Engineering and Inspection
STP-0295-00(021)LPA / 108427-701000
City of Long Beach CSX Railroad Crossing Grade Improvements**

Dear Chuck,

The City of Long Beach requested the use of MDOT Master Contract for selection of a consultant in accordance with Section 2.2.2 of the Local Public Agency Consultant Operating Procedures for Professional Services on August 1, 2023. On August 24, 2023, the City requested the proposals from Neel-Schaffer, Inc., Pickering Firm, Inc., and Waggoner Engineering Inc. After review of these proposals, the City of Long Beach has selected Neel-Schaffer, Inc. as our Professional Services Consultant for Construction Engineering & Inspection services.

Thank you for your time and consideration in this selection process.

Sincerely,

George L. Bass, Mayor
Donald Frazer, Mayor Pro Tempore

Minutes of September 19, 2023 Mayor and Board of Aldermen

Alderman Brown made motion seconded by Alderman Parker and unanimously carried to approve the following contracts with Formax and RJ Young for lease of a postage meter for 48 months, and authorize the Mayor Pro Tempore to execute same:



Postage Meter Rental Agreement

Section (A) Office Information

Office Number: 8131	Office Name: Formax / Mint	Office Phone #: 800-232-5535	Date Submitted:
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Section (B) Billing information

Company Name (Full legal name): City of Long Beach		
DBA:		
Billing Address: P. O. Box 929		
Billing City: Long Beach	State: Ms	ZIP Code + 4: 39560
Billing Contact Name: Kini Gonsoulin		Billing Contact Title: Finance Officer
Phone Number: 228-863-1556	Fax Number:	

Section (C) Installation Information if different than billing information

Company Name (Full legal name): City of Long Beach		
Installation Address (No PO Boxes): 201 Jeff Davis Ave		
Installation City: Long Beach	State: Ms	ZIP Code + 4: 39560
Installation Contact Name: Kini Gonsoulin		Installation Contact Title: Finance Officer
Phone Number: 228-863-1556		Fax Number:
Main Post Office / Mail Drop Off: Long Beach	Post Office ZIP Code: 39560	

Section (D) Postage Meter Rental/Services Payment Information

Monthly Meter Rental Payments \$ 30 for 48 months, thereafter \$ for months
Payment Frequency: <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi-Annually <input type="checkbox"/> Annually
<input checked="" type="checkbox"/> Tax Exempl. (Attach Exemption Certificate)
<input checked="" type="checkbox"/> Mail me a rental invoice
<input type="checkbox"/> Bill my Quadient Postage Funding Account
<input type="checkbox"/> Bill my credit card (Customer to submit authorization form)
<input type="checkbox"/> ACH Direct Debit (Customer to submit authorization form)
Postage Funding Method: <input checked="" type="checkbox"/> Bill Me <input type="checkbox"/> Prepay By Check <input type="checkbox"/> ACH Debit (customer to submit authorization form)
Postage Funding Account: <input checked="" type="checkbox"/> New <input type="checkbox"/> Existing Account POC Account # _____

Section (E) Postage Meter and Funding

Meter Model: 110-Meter	Machine Model: 110W5
Service Products (Check all that apply)	
<input checked="" type="checkbox"/> Installation & Training	

Section (F) Approval

Existing customers who currently fund the Postage account by ACH Debit will not be converted to a Postage Funding Account unless initial here _____.	
This document consists of a Postage Meter Rental Agreement and an Online Services and Software Agreement with Quadient. Your signature constitutes an offer to enter into such agreements, and acknowledges that you have received, read, and agree to all applicable terms and conditions (version Rental-Terms-V1-2020), which are also available at www.quadient.com/Rental-Terms-V1-2020 , and that you are authorized to sign the agreements on behalf of the customer identified above. The applicable agreements will become binding on the companies identified above only after an authorized individual accepts your offer by signing below, or when the equipment is shipped to you.	
 Authorized Signature	Donald Frazer Mayor Pro Tempore Print Name and Title
	9/19/23 Date Accepted
Accepted by Formax	Date Accepted

Minutes of September 19, 2023 Mayor and Board of Aldermen

RJ Young Company - Nashville		(615)255-8551	Page 1 of 2
P. O. Box 280358 Nashville, TN 37228		(800)347-1955	Order # HVK500
Cost Per Copy Agreement		Customer Purchase Order	Sales Rep # 20SA81
<i>Billing Location</i>		<i>Install Location</i>	
Full Customer Name - Include Inc., Corp., LLC etc. City of Long Beach		Customer Name City of Long Beach	
Street Address P. O. Box 929		Department	County Harrison
City Long Beach	State MS	Zip+4 39560	City Long Beach
Contact Name Kini Gonsoulin	Phone # 228-863-1556	Fax #	Phone # 228-863-1556
Email kini@cityoflongbeachms.com		Email kini@cityoflongbeachms.com	

Qty.	Manufacturer	Equip. ID	Model	Serial Number	Unit Price	Amount
1	Formax		Mint 110W5			
Trade-In/Buyout (Items to be picked up)						Total This Page
						Total From Add'l Equipment List
						Sales Tax
						Tax Exempt: <input type="checkbox"/> Yes <input type="checkbox"/> No
						Total

1) The equipment specified above will be provided at the following rates:

Commencement Date	Term	Security Deposit	Total Minimum Payment	Minimum Billing Frequency		Overage Billing Frequency	
	48		\$84.00	Monthly		Monthly	
Monthly Minimum Number of B&W Copies		Overage Rate per B&W Copy		Monthly Minimum Number of Color Copies	Overage Rate per Color Copy	<input type="checkbox"/> Yes <input type="checkbox"/> No Master Unit <input type="checkbox"/> Yes <input type="checkbox"/> No Color Supplies <input type="checkbox"/> Yes <input type="checkbox"/> No Drum/Photo Conductor <input type="checkbox"/> Yes <input type="checkbox"/> No Imaging Units <input type="checkbox"/> Yes <input type="checkbox"/> No Parts/Labor <input type="checkbox"/> Yes <input type="checkbox"/> No Toner/Dispersant <input type="checkbox"/> Yes <input type="checkbox"/> No Developer <input type="checkbox"/> Yes <input type="checkbox"/> No Other	
Monthly Minimum Number of Square Feet		Overage Rate per Square Foot		Monthly Minimum Number of Linear Feet	Overage Rate per Linear Foot	<input type="checkbox"/> New Account <input type="checkbox"/> New Equipment <input type="checkbox"/> Upgrade <input type="checkbox"/> Remanufactured Equipment <input type="checkbox"/> Additional Unit <input type="checkbox"/> Used <input type="checkbox"/> MAM <input type="checkbox"/> MICR Toner	
Monthly Minimum Number of B&W Prints		Overage Rate per B&W Print		Monthly Minimum Number of Color Prints	Overage Rate per Color Print		
Monthly Minimum Number of Misc		Overage Rate per Misc		Monthly Minimum Number of Misc 2	Overage Rate per Misc 2		

Remarks:
The monthly lease payment includes RJ Young Service.

Additional terms and conditions on page 2.

Signature: <u>Donald Fraser</u>	Sales Rep: <u>[Signature]</u>	Date: _____
Print Name: <u>Donald Fraser</u>	Sales Manager: _____	Date: _____
Title: <u>Mayor Pro Tempore</u>	Date: <u>9/19/23</u>	



Minutes of September 19, 2023 Mayor and Board of Aldermen

COST PER COPY AGREEMENT TERMS AND CONDITIONS *This is a non-cancelable agreement*

Page 2 of 2

Order # HVK500

2. RENTAL AGREEMENT. You agree to rent the equipment described in this Cost per Copy agreement (collectively "Equipment"). This Agreement will begin on the commencement date listed in the Cost Per Copy Agreement (CPC). You agree to pay us any required Security Deposit when you sign this Agreement. Your CPC Payment consists of the Periodic Equipment Payment and the Periodic Supply Maintenance Payment. The Excess Charge Per Copy is the variable charge for maintenance services and supplies (as set forth in this Agreement) for copies in excess of Minimum Copy Requirement for the applicable period. Unless otherwise set forth in this Agreement, each CPC payment is due and payable monthly. The Minimum Monthly Payment is due whether or not you receive an invoice from us. Excess Charge Per Copy amounts are payable as Invoiced by us following the end of each Billing Period. If in any period you make fewer copies than the Periodic Copy Requirement, you cannot carry over that amount to any other period. We have the right to increase, without written notice, the Periodic Supply Maintenance Payment and the Excess Charge per Copy on an annual basis. You will provide us with accurate meter readings for each item of Equipment when and by such means as we request. **YOU AGREE THAT WE MAY ESTIMATE THE NUMBER OF COPIES PRODUCED IF A METER READING IS NOT RECEIVED BY US WITHIN 5 DAYS OF THE DATE WE SPECIFY. IF AN ACTUAL METER READING IS RECEIVED WITHIN 90 DAYS OF THE BILLING DATE FOR THE EXCESS COPIES, AN ADJUSTMENT WILL BE MADE. NOTWITHSTANDING ANY ADJUSTMENT, YOU WILL NEVER PAYLESS THAN THE PERIODIC CPC PAYMENT.** Single copy charges apply up to 8.5" x 14". For efficient and electronic meter reading, RJY utilizes specialized software that reports current meter readings on all print devices connected to your Network. Customer agrees that meters may be accessed and reported in this manner. Should the number of scans exceed the total of all prints and copies, we reserve the right to invoice these excess scans at \$0.025 per scan. You will make all payments required under this Agreement to us at the address we may specify in writing. Unless a proper exemption certificate is provided applicable sales and use taxes will be added to the Payment. If any Payment is not paid when due, you will pay us a late charge of up to 15% of the amount of the payment or \$15.00 whichever is greater (or such lesser rate as is the maximum rate allowed under applicable law). You also agree to pay \$35.00 for each returned check. Restrictive endorsements or additional terms on checks you send to us will not reduce your obligations to us.

3. CONNECTION TO COMPUTERS/NETWORKS. RJY offers complimentary installation of manufacturer print drivers and software for any connectable equipment listed in this agreement. Installation is performed by support personnel. Customer agrees to provide access and information required to complete the requested installation. Customer will provide all necessary network cabling required for installation. If RJY performs the installation/Connection, the customer agrees that RJY is responsible for only completing the installation and setup of the equipment listed in this agreement. The initial installation and any additional basic configurations are covered at no charge for the first 90 days under the condition that the customer has made no changes to their network during that period. Installations requiring extensive configuration will be quoted separately and performed upon request. After the initial 90 day period, any network connectivity support requested by the customer will be billed at RJY's then current charge rate for connectivity support. RJY will not be held liable for any errors, property damage, loss of time or profit, consequential or incidental damages of any kind arising as result of operating any software provided with the purchase of a manufacturer's product or downloaded from a manufacturer's website.

4. TITLE; RECORDING. We are the owner of and will hold title to the Equipment. You will keep the Equipment free of all liens and encumbrances.

5. USE. You shall use the Equipment in a careful and proper manner in conformance with manufacturer's specifications and all laws, ordinances and regulations in any way relating to the possession or use of the Equipment. Customer represents that these products are NOT acquired for personal, family, or household purposes.

6. INDEMNIFICATION. You are responsible for any losses, damages, penalties, claims, suits and actions (collectively "Claims"), whether based on a theory of strict liability or otherwise caused by or related to the installation, ownership, maintenance, use, rental, possession, or delivery of the Equipment. You agree to reimburse us for and, if we request, to defend us against any Claims.

7. ASSIGNMENT. You agree not to sell, assign, transfer or sublease the equipment or your interest in this Agreement. We may, without notifying you, sell, assign, or transfer this Agreement and our rights to the Equipment. The rights of the assignee will not be subject to any claim, defense or set-off that you may have against us.

8. LOSS OR DAMAGE. You are responsible for any loss, theft, destruction of, or damage to, the Equipment (collectively "Loss") from any cause at all, whether or not insured, until it is delivered to us at the end of this Agreement. You are required to make all CPC payments even if there is a Loss. You must notify us in writing immediately of any Loss. Then, at our option, you will either (a) repair the Equipment so that it is in good condition and working order, eligible for any manufacturer's certification, or (b) pay us the amount equal to the net present value of all unpaid CPC Payments for the remainder of the term plus the present value of our anticipated residual interest in the Equipment, each discounted at 5% per year, compounded annually, plus all other amounts due or that may become due under this Agreement. If you have satisfied your obligations under this Section 9, we will forward to you any insurance proceeds that we receive for lost, damaged, or destroyed Equipment. If you are in default, we will apply any insurance proceeds we receive to reduce your obligations under Section 16 of this Agreement.

9. TAXES AND FEES. You agree to show the Equipment as "Leased Property" on all personal property tax returns. You will pay when due, either directly or to us upon our demand, all taxes, fines and penalties relating to this Agreement or the Equipment that are now or in the future assessed or levied by any state, local or government authority.

10. EQUIPMENT LOCATION; RETURN. You will keep and use the Equipment only at the Equipment Location shown in this Agreement. You may not move the Equipment without our prior written consent. You will provide adequate space and electrical services for the operation of the Equipment. You will not make any alterations, additions or replacements to the Equipment without our prior written consent. All alterations, additions or replacements will become part of the Equipment and our property at no cost or expense to us. Upon the expiration or earlier termination of this Agreement, you will deliver the Equipment to us, in good condition, full working order and in complete repair, except ordinary wear and tear. We will pick up the Equipment provided that the Equipment is in our servicing territory. If the Equipment is outside our servicing territory, you will crate, insure, and ship the Equipment, in good working condition, to us by means we designate, with all expenses to be prepaid by you. You will be responsible for any damage to the Equipment during shipping.

11. RENEWAL. Unless you give us at least 30 days written notice before the end of the initial term or any renewal term of this Agreement, this Agreement will automatically renew for an additional one year renewal term. During such renewal term(s) the CPC Payment will remain the same (subject to the annual adjustment provided in Section 2 above). We may cancel an automatic renewal term by sending you written notice 10 days prior to such renewal term.

12. YOUR REPRESENTATIONS. You state for our benefit that as of the date of this Agreement: (a) you have the lawful power and authority to enter into this Agreement; (b) the individuals signing this Agreement have been duly authorized to do so on your behalf; (c) by entering into this Agreement you will not violate any law or other agreement to which you are a party; (d) you are not aware of anything that will have a material negative effect on your ability to satisfy your obligations under this Agreement; and (e) all financial information you have provided us is true and accurate and provides a good representation of your current financial condition.

13. YOUR PROMISES. In addition to the other provisions of this Agreement, you agree that during the term of this Agreement (a) you will promptly notify us in writing if you move your principal place of business, if you change the name of your business, or if there is a change in your ownership; (b) you will provide to us such financial information as we may reasonably request from time to time; and (c) you will take any action we reasonably request to protect our rights in the Equipment and to meet your obligation under this Agreement.

14. DEFAULT. You will be in default under this Agreement if any of the following events occur: (a) you fail to make any CPC payment or other sum when due; (b) you fail to comply with any other term or condition of this Agreement or any other agreement between us, or fail to perform any obligation imposed upon you relating to this Agreement or any such other agreement; (c) you become insolvent, you dissolve or are dissolved, you assign your assets for the benefit of your creditors, you sell, transfer or otherwise dispose of all or substantially all of your assets, or you enter (voluntarily or involuntarily) into any bankruptcy or reorganization proceeding; (f) without our prior written consent, you merge or consolidate with any other entity and you are not the survivor of such merger or consolidation; (e) any guarantor of this Agreement dies, does not perform its obligations under the guaranty, or becomes subject to one of the events listed in clause (c) above.

15. REMEDIES. In the event you default under this Agreement, as defined above, we will have the right to take ONE OR MORE of the following actions, in addition to any and all other remedies that may be available to us under law: (a) cancel this Agreement without prior notice or warning to you; (b) file a law suit against you to collect all past due amounts AND ALL AMOUNTS THAT WILL BECOME DUE IN THE FUTURE DURING THE UNEXPIRED TERM, plus the "residual value" of the Equipment as determined by us in our sole but reasonable judgment, plus all other fees, charges or amount that are then due, plus all of our reasonable legal costs, including but not limited to reasonable attorneys' fees, reasonable overhead for employee time spent on preparing for suit or attempting to collect payments and mitigate our damages; (c) repossess the Equipment or apply to a court for an order allowing repossession. In this event, you agree that, after the Equipment is repossessed, you will have no further rights in the Equipment, and you agree we may resell, re-lease or otherwise remarket the Equipment without notice to you. You agree (and you waive any rights that may provide to the contrary) that we will NOT be required to repossess, resell, re-lease or otherwise remarket the Equipment at any time, and that our failure to do so will not affect our other rights of collection and other rights under this Agreement or under law.

16. NOTICES. All of your written notices to us must be sent by certified mail or recognized overnight delivery service, postage prepaid, to us at our address stated in this Agreement. All of our notices to you may be sent first class mail, postage prepaid, to your address stated in this Agreement. At any time after this Agreement is signed, you or we may change an address by giving notice to the other of the change.

17. MISCELLANEOUS. This Agreement contains our entire agreement and supersedes any conflicting provision of any equipment purchase order or any other agreement. Once this agreement is signed by you, the agreement constitutes an OFFER to you, and will not be binding until ACCEPTED by us, as evidenced by the signature of the Corporate Office. Any change in the terms and conditions of this Agreement must be in writing and signed by one of our Officers. You agree, however, that we are authorized, without notice to you, to supply missing information or correct obvious errors in this Agreement. If a court finds any provision of this Agreement to be unenforceable, the remaining terms of the Agreement shall remain in effect.

18. JURISDICTION. You and any Guarantor agree that this Agreement will be deemed fully executed and performed in the State of Tennessee and will be governed by Tennessee law. YOU AND ANY GUARANTOR EXPRESSLY AGREE TO: (A) BE SUBJECT TO THE PERSONAL JURISDICTION OF THE STATE OF TENNESSEE; (B) ACCEPT VENUE IN ANY FEDERAL OR STATE COURT IN TENNESSEE; AND (C) WAIVE ANY RIGHT TO A TRIAL BY JURY.

19. INTERPRETATION. As a convenience to you and to further expedite this transaction for you, you agree that a photocopy, electronic image or facsimile of this Agreement which includes a photocopy, electronic image or facsimile of the signatures of both parties shall be as valid, authentic and legally binding as the original version for all purposes and shall be admissible in court as final and conclusive evidence of this transaction and of the execution of this document.

20. Customer will be enrolled in the RJ Young online customer portal (ePASS). This online portal allows authorized users designated by customer to order supplies, place service calls, pay invoices, view bills and view account information online.

**Minutes of September 19, 2023
Mayor and Board of Aldermen**

Alderman Bennett made motion seconded by Alderman Brown and unanimously carried to accept the following letter of resignation from Ward 1 Planning & Development Commissioner Chris Fields:

September 8, 2023

To Mr. Patrick Bennett
Alderman Ward 1 City of Long Beach MS

From Mr. Chris Fields
117 East Ave.
Long Beach MS 39560

Mr. Bennett

Please accept this letter as my formal resignation from the City of Long Beach MS Planning & Development Commission. I have enjoyed my time as a commissioner and hope that I've played a small part in the continued growth of the city.

My resignation will be effective September 14, 2023 but if the new commissioner is able to serve prior to that date I will vacate the position at that time.

I wish you and the city nothing but the best in the future.

Sincerely,


Chris Fields

Alderman Bennett made motion seconded by Alderman Brown and unanimously carried to appoint Trey Gaddy to the Planning & Development Commission to fill the unexpired term of Chris Field ending July 1, 2025.

**Minutes of September 19, 2023
Mayor and Board of Aldermen**

**AN ORDER BY THE MAYOR AND BOARD OF ALDERMAN OF THE CITY OF
LONG BEACH APPOINTING A CITY ATTORNEY FOR THE CITY,
PRESCRIBING HIS DUTIES AND FIXING HIS COMPENSATION, AND FOR
RELATED PURPOSES.**

**BE IT ORDERED BY THE MAYOR AND BOARD OF ALDERMEN OF THE
CITY OF LONG BEACH, MISSISSIPPI, AS FOLLOWS:**

SECTION 1. That Stephen B. Simpson, Esq., an attorney licensed to practice law under the laws of the State of Mississippi be, and is hereby appointed City Attorney of the City of Long Beach, Mississippi, for a term beginning July 1, 2021, and continuing until June 30, 2025, to so serve, however, at the will and pleasure of the Governing Authorities of the City and until his successor shall have been appointed and qualified.

SECTION 2. That the duties of the City Attorney shall consist of advising the Mayor and Board of Aldermen in matters relating to the corporate and governmental municipal affairs of the City, representing the City in all legal matters and litigation wherein the City may be or become involved, drafting appropriate laws, orders, resolutions and ordinances as required by the Mayor and Board of Aldermen and generally to perform those duties required of a City Attorney of a code charter municipality under the Laws of the State of Mississippi, including borrowing of monies and issuance of notes, certificates of indebtedness and bonds of the City of Long Beach, where applicable.

SECTION 3. That for his regular duties of attending regular meetings of the Mayor and Board of Aldermen and there advising said governing authority of the municipality in matters relating to the corporate and governmental municipal affairs of the City, Stephen B. Simpson, shall be paid a non-refundable retainer of \$3,000.00 per month, to be paid monthly out of the City Treasury. In addition to the said monthly retainer, Stephen B. Simpson, shall be paid an hourly fee of One Hundred Sixty Five Dollars (\$165.00) per hour for services rendered out of Court, (exclusive of the aforesaid time expended in attendance at regular meetings of the governing authority), and One Hundred Sixty Five Dollars (\$165.00) per hour for services rendered in Court, to be paid monthly upon billing thereof. In addition, as provided by Mississippi Code Annotated Section 25-15-25, as amended, the City Attorney shall be paid a fee not to exceed one percent (1%) of the amount of any notes, certificates of indebtedness, bonds or other indebtedness or financing transactions, issued pursuant to any provision of any applicable

Minutes of September 19, 2023 Mayor and Board of Aldermen

law for or on behalf of the City of Long Beach. Fees do not include expenses, and for any expense incurred in the performance of his duties, the City Attorney shall be reimbursed as provided by law.

SECTION 4. That in such matters as the Mayor and Board of Aldermen may elect, James C. Simpson Jr., Esq, shall remain as counsel to the City and assist in any such matters so directed and shall only be paid an hourly fee of One Hundred Sixty Five Dollars (\$165.00) per hour, to be paid monthly upon billing thereof.

SECTION 5. This Order shall take effect and be in force from and after its adoption, and shall confirm said appointment effective July 6, 2021.

Alderman McCaffrey moved the adoption of the above and foregoing Order, seconded by Alderman Brown and the question being to a roll call vote by the Mayor Pro Tempore, the result was as follows:

Alderman Donald Frazer	Voted	Present Not Voting
Alderman Patrick Bennett	Voted	Aye
Alderman Bernie Parker	Voted	Aye
Alderman Angie Johnson	Voted	Aye
Alderman Timothy McCaffrey, Jr.	Voted	Aye
Alderman Mike Brown	Voted	Aye
Alderman Pete McGuey	Voted	Absent Not Voting

The question having received the affirmation vote of all the Aldermen present and voting, the Mayor Pro Tempore declared the motion carried.

APPROVED:


Donald Frazer, Mayor Pro Tempore

ATTEST:


Stacey Dahl, City Clerk

**Minutes of September 19, 2023
Mayor and Board of Aldermen**

There came on for discussion the City's property on 4th Street, whereupon Alderman Brown made motion seconded by Alderman Parker and unanimously carried to direct Comptroller Kini Gonsoulin to acquire 3 appraisals for the 4th Street Fire Station property.

There came on for discussion issuing bonds, whereupon Alderman Brown made motion seconded by Alderman Parker and unanimously carried to direct Comptroller Kini Gonsoulin to compile a list of forthcoming projects that require matching funds to be considered for a bond issue.

There came on for discussion Short Term Rentals, whereupon Alderman Parker made motion seconded by Alderman Brown and unanimously carried to establish a moratorium on Short Term Rentals effective September 20, 2023 through January 1, 2024.

* * *

Alderman Brown made motion seconded by Alderman McCaffrey and unanimously carried to schedule a Work Session to discuss Short Term Rentals for Tuesday, October 10, 2023 at 5:00 p.m. at Long Beach City Hall Meeting Room.

Alderman McGoey arrived at this time.

Alderman Parker made motion seconded by Alderman McGoey and unanimously carried to declare an Executive Session for the transaction of public business, to wit: To discuss harbor lease negotiations and possible litigation matters.

The question having receive the affirmative voice vote of all of the Aldermen present and voting, the Mayor Pro Tempore declared the motion carried, whereupon the Board entered into Executive Session.

* * *

The Meeting resumed in Open Session, whereupon no action was taken.

**Minutes of September 19, 2023
Mayor and Board of Aldermen**

Mayor Pro Tempore Frazer apprised the Board of an issue in Castine Point subdivision. It was discovered that a 15 foot easement was granted where Castine Point subdivision abuts The Grove subdivision. Due to the size of the current ditch and the area needed to maintain it, Alderman McGoey made motion seconded by Alderman Parker and unanimously carried to work with the developer and contractor to pipe the existing ditch.

Mayor Pro Tempore Frazer apprised the Board that the City has an opportunity to apply for a Transportation Alternative grant from Gulf Regional Planning Commission for sidewalks on 3rd Street from Jeff Davis Avenue to the USM campus, and the deadline for application is October 2, 2023. After discussion, Alderman Parker made motion seconded by Alderman Brown and unanimously carried authorizing the City to make application for the above referenced grant.

Based on the recommendation of Chief Seal and certification by the Civil Service Commission, Alderman Parker made motion seconded by Alderman McCaffrey and unanimously carried to approve personnel matters, as follows:

Police Dept:

- Transfer, Detective Destin Guillot, PSA-10-IV, effective October 1, 2023
- New Hire, Police Officer 1st Class Kameron DeArmas, PS-9-B, effective September 16, 2023

* * *

Based on the recommendation of Chief Skellie and certification by the Civil Service Commission, Alderman Parker made motion seconded by Alderman McGoey and unanimously carried to approve personnel matters, as follows:

Fire Dept:

- Promotion, Lieutenant Cody Carroll, FS-12-IV, effective October 1, 2023
- Promotion, Driver/Operator Tyler Hill, FS-10-II, effective October 1, 2023
- Promotion, Driver/Operator Clayton Maxwell, FS-10-II, effective October 1, 2023
- New Hire, Firefighter 1st Class Austin Allen, FS-9-B, effective October 1, 2023
- New Hire, Firefighter 1st Class Quinten McMillan, FS-9-B, effective October 1, 2023
- New Hire, Firefighter 1st Class Patrick Gaddy, FS-9-B, effective October 1, 2023

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- New Hire, Firefighter 1st Class Brandon Sumerall, FS-9-B, effective October 1, 2023

* *

Based on the recommendation of Library Director Denise Saucier, Alderman Parker made motion seconded by Alderman Brown and unanimously carried to approve personnel matter as follows:

Library:

- Resignation, Part-time Clerk Blayne McPherson, effective September 30, 2023

Alderman Brown made motion seconded by Alderman McCaffrey and unanimously carried to accept the August 2023 Revenue/Expense Report.

Alderman Brown made motion seconded by Alderman McCaffrey and unanimously carried to approve the following Budget Amendments for FY 23:

Finance Officer's Office

Memo

To: Mayor and Board of Aldermen
From: Kini Gonsoulin
Date: 9/14/2023
Re: Budget Amendment

Please find the attached budget amendments for consideration on the September 19, 2023 board meeting. These are the year end amendments that are made to make sure our budget is in compliance. If you have any questions regarding this request, please do not hesitate to ask. Thank You.

City of Long Beach
Budget Amendment Request

Fund Name: General Fund, Department #: 111, Department Name: Mayor's Office, Date: 9/19/2023, Budget Entry #:

Table with 5 columns: Fund Name, Original Budget, Prior Amendments, This Amendment, Revised Budget. Rows include Wages & Salaries, State Retirement, FICA, Travel, and Fund Balance.

Amendment to budget funds in the Mayor's Office for filling Community Affairs position and travel.

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City of Long Beach Budget Amendment Request

Fund Name	General Fund	Date	9/19/2023
Department #	125	Budget Entry #	
Department Name	Municipal Court		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
New Computer Hardware 125-630200	-		2,662	2,662
Fund Balance			(2,662)	(2,662)

Amendment to roll over unexpended funds from FY 22 for new software project.

Amendment #16

City of Long Beach Budget Amendment Request

Fund Name	General Fund	Date	9/19/2023
Department #	146	Budget Entry #	
Department Name	General Admin		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
Operating Supplies 146-610700	2,000	-	140	2,140
Insurance Premiums 146-629300	730,000	-	132,404	862,404
Fund Balance			(132,544)	(132,544)

Amendment for insurance premiums

Amendment #17

Minutes of September 19, 2023 Mayor and Board of Aldermen

City of Long Beach Budget Amendment Request

Fund Name	<u>Hurricane</u>	Date	<u>9/19/2023</u>
Department #	<u>165</u>	Budget Entry #	<u></u>
Department Name	<u>Hurricane Zeta</u>		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
<u>Operating Supplies 165-610700</u>	-		4,043	4,043
<u>Contractual Fees 165-620900</u>	-		1,103,678	1,103,678
<u>FEMA Reimbursements 030-455502</u>			(1,107,721)	

Amendment for Hurricane Zeta expenditures and reimbursements

Amendment #18

City of Long Beach Budget Amendment Request

Fund Name	<u>General Fund</u>	Date	<u>9/19/2023</u>
Department #	<u>213</u>	Budget Entry #	<u></u>
Department Name	<u>Police Dept</u>		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
<u>Gasoline, Oil & Grease 213-614000</u>	80,000		29,357	109,357
<u>New Vehicles 213-630500</u>	70,000	67,512	65,855	203,367
<u>Insurance Proceeds</u>			(10,164)	(10,164)
<u>Fund Balance</u>			(85,048)	(85,048)

Amendment to increase the Gas, Oil & Grease line item and to budget the purchase of a totaled patrol car.

Amendment #19

Minutes of September 19, 2023 Mayor and Board of Aldermen

City of Long Beach Budget Amendment Request

Fund Name	Federal Seizure	Date	9/19/2023
Department #	214	Budget Entry #	
Department Name	Federal Seizure		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
Capital Outlay 214-630100	-	-	12,850	12,850
Federal Seizure Funds			(12,850)	(12,850)

Amendment to budget funds for settlement of 3 drug seized vehicles

Amendment #20

City of Long Beach Budget Amendment Request

Fund Name	State Seizure	Date	9/19/2023
Department #	238	Budget Entry #	
Department Name	State Seizure		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
Misc Services & Charges 238-627900	-	-	-	91
State Seizure Funds			(91)	(91)

Amendment to budget funds for drug seized funds

Amendment #21

Minutes of September 19, 2023 Mayor and Board of Aldermen

City of Long Beach Budget Amendment Request

Fund Name	General Fund	Date	9/19/2023
Department #	290	Budget Entry #	
Department Name	Fire Dept.		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
Machinery/Equipment 290-611800-8001	12,500	2,500	98,575	113,575
Transfer Out Bond/Int 290-661300-8001	42566		1,200	43,766
Fire Rebate Funds			(99,775)	(99,775)
New Vehicles 290-630500	-	-	519,281	519,281
Loan Proceeds 010-580100	-	-	(519,281)	(519,281)

Amendment to budget expenditure of Fire Rebate Funds and purchase of new fire truck.

Amendment #22

City of Long Beach Budget Amendment Request

Fund Name	Capital Projects	Date	9/19/2023
Department #	345	Budget Entry #	
Department Name	Capital Projects		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
Klondyke/Commission 345-640100-10011	-	-	90,488	90,488
Pineville Sidwalk Phase II 345-640100-10014	-	-	8,214	8,214
TIMGP Joyce Drainage 345-640100-10015	-	-	22,894	22,894
Cemetery Improvements 345-640100-10016	-	-	95,872	95,872
NRCS Watershed Plan 345-640100-10017	-	-	300,483	300,483
Trautman Basin Wastewater 345-640100-10019	-	-	446,374	446,374
Quarles House 345-640100-10022	-	-	886,248	886,248
Pineville Sidwalk Phase III 345-640100-10023	-	-	13,672	13,672
Mt. Bass Drainage 345-640100-10025	-	-	639,122	639,122
Klondyke/28th St 345-640100-10027	-	-	49,478	49,478
Downtown Revitalization 345-640100-10029	-	-	130,083	130,083

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City of Long Beach Budget Amendment Request

<u>Fund Name</u>	<u>Capital Projects</u>	<u>Date</u>	<u>9/19/2023</u>
<u>Department #</u>	<u>345</u>	<u>Budget Entry #</u>	
<u>Department Name</u>	<u>Capital Projects</u>		
<u>Harbor SE Bulkhead 345-640100-10031</u>	<u>-</u>	<u>-</u>	<u>10,201</u>
<u>Mitchell Rd Drainage 345-640100-10032</u>	<u>-</u>	<u>-</u>	<u>156,237</u>
<u>Gateway/Streetscape Signage 345-640100-10033</u>	<u>-</u>	<u>-</u>	<u>1,111,196</u>
<u>Fire Station #3 345-640100-10034</u>	<u>-</u>	<u>-</u>	<u>622,068</u>
<u>2nd St Sidewalk 345-640100-10035</u>	<u>-</u>	<u>-</u>	<u>404,903</u>

Amendment for all ongoing Capital Projects

Amendment #23

City of Long Beach Budget Amendment Request

<u>Fund Name</u>	<u>Library Grants</u>	<u>Date</u>	<u>9/19/2023</u>
<u>Department #</u>	<u>410</u>	<u>Budget Entry #</u>	
<u>Department Name</u>	<u>Library Grants</u>		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
<u>Library Books 410-613000</u>	<u>-</u>	<u>-</u>	<u>1,798</u>	<u>1,798</u>
<u>Other Library Grants 010-460300</u>	<u>-</u>	<u>(3,000)</u>	<u>(1,798)</u>	<u>(4,798)</u>

Amendment to budget Library Grant funds expended.

Amendment #24

**Minutes of September 19, 2023
Mayor and Board of Aldermen**

**City of Long Beach
Budget Amendment Request**

Fund Name	<u>General Fund</u>	Date	<u>9/19/2023</u>
Department #	<u>425</u>	Budget Entry #	<u> </u>
Department Name	<u>Senior Citizens</u>		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
Capital Outlay 425-630100	-	-	53,605	53,605
General Fund			(53,605)	

Amendment to budget funds for generator at Senior Citizens Center

Amendment #25

**City of Long Beach
Budget Amendment Request**

Fund Name	<u>General Fund</u>	Date	<u>9/19/2023</u>
Department #	<u>435</u>	Budget Entry #	<u> </u>
Department Name	<u>Recreation</u>		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
Summer Recreation Program 435-613500	10,000	-	4,326	14,326
Summer Recreation Fees 010-500702	12,000		(4,326)	7,674

Amendment to budget Summer Recreation Fees recieved and expended.

Amendment #26

Minutes of September 19, 2023 Mayor and Board of Aldermen

City of Long Beach Budget Amendment Request

Fund Name	Harbor	Date	9/19/2023
Department #	445	Budget Entry #	
Department Name	Harbor		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
Office Supplies 445-610400	250	-	825	1,075
Operating Supplies 445-610700	250	-	278	528
Harbor Maintenance 445-611200	1,000	-	510	1,510
Equipment Maintenance 445-612200	100	-	119	219
Uniforms 445-612500	-	-	212	212
Electric Utilities 445-626004	20,000	-	(1,944)	18,056
Capital Outlay 445-630100	-	-	12,779	12,779
Fund Balance			(12,779)	(12,779)

Amendment to transfer funds within the Harbor Budget and add funds for the purchase of a four wheeler.

Amendment #27

City of Long Beach Budget Amendment Request

Fund Name	Tidelands	Date	9/19/2023
Department #	428	Budget Entry #	
Department Name	Tidelands		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
Engineering 448-646211	-	-	13,628	13,628
Grant Revenue 448-460500			(13,628)	(13,628)

Amendment to budget Tidelands funds expended to be reimbursed.

Amendment #28

Minutes of September 19, 2023 Mayor and Board of Aldermen

City of Long Beach Budget Amendment Request

Fund Name	General Fund	Date	9/19/2023
Department #	611	Budget Entry #	
Department Name	Planning/Zoning		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
Consultant Fees 611-620700	5,000	-	1,402	6,402
Office Supplies 611-610400	3,000	-	(1,402)	1,598
Capital Outlay 611-630100	-	-	33,852	33,852
General Fund			(33,852)	

Amendment to transfer funds within the Planning/Zoning budget and roll forward unexpended funds from FY 22 for the purchase of a truck.

Amendment #29

City of Long Beach Budget Amendment Request

Fund Name	Water/Sewer Fund	Date	9/19/2023
Department #	850	Budget Entry #	
Department Name	Water/Sewer Contingency		

	Original Budget	Prior Amendments	This Amendment	Revised Budget
Capital Outlay 850-630100	-		74,990	74,990
Contractual Fees 850-620900	115,000	-	(74,990)	40,010

Line item transfer within the Water/Sewer Contingency

Amendment #30

**Minutes of September 19, 2023
Mayor and Board of Aldermen**

Alderman Parker made motion seconded by Alderman Brown and unanimously carried to approve the following Interlocal Agreement with Harrison County for the Mississippi Office of Homeland Security Operation Stonegarden Grant Program FY 2021, and authorize the Mayor Pro Tempore to execute same:

The State of Mississippi

County of Harrison

KNOW ALL BY THESE PRESENT

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF LONG BEACH
AND COUNTY OF HARRISON, MISSISSIPPI**

**MISSISSIPPI OFFICE OF HOMELAND SECURITY
OPERATION STONEGARDEN GRANT PROGRAM FY 2021**

This Agreement is made and entered into this ____ day of _____ by and between the COUNTY of Harrison, and the CITY of LONG BEACH, acting by and through its governing body, the City Council or Board of Supervisors hereinafter referred to as CITY, both of Harrison County, State of Mississippi, witnesseth:

WHEREAS, this Agreement is made under the authority of Section 21-21-41, Mississippi Code of 1972 and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance of those payments from current revenues legally available to that party: and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensated the performing party for the services or functions under this agreement and that the Harrison County Board of Supervisors and the Harrison County Sheriff's Office shall be both the fiscal and applicant agency: and

WHEREAS, the CITY and the COUNTY agree to disburse the funds from the Mississippi Office of Homeland Security Operation Stonegarden Grant award as the amounts appear on the Mississippi Office of Homeland Security Operation Stonegarden Grant Program FY 2022 allocation list and forego any sharing of the funds.

NOW THEREFORE, the COUNTY and CITY agree as follows:

Section 1.

COUNTY agrees to use \$24,356.25 for the Operation Stonegarden Grant Award Program until March 31, 2024 and to comply with all applicable Federal statutes, regulations, policies, guidelines, and requirements, including OMB Circulars A-21, A-87, A-102, A-110, A-122, A-133; Executive Order 12372 (intergovernmental review of federal programs); and 28 C.F.R. pts. 66 or 70 (administrative requirements for grants and cooperative agreements) and also specifically assures and certifies all items as written in the attached Addendum A "Standard

Minutes of September 19, 2023
Mayor and Board of Aldermen

Assurances and Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; And Drug-Free Workplace Requirements”

Section2.

CITY agree to use \$75,633.75 for the Operation Stonegarden Grant Program until March 31, 2024; and to comply with all applicable Federal statutes, regulations, policies, guidelines, and requirements, including OMB Circulars A-21, A-87, A-102, A-110, A-122, A-133; Executive Order 12372 (intergovernmental review of federal programs); and 28 C.F.R. pts. 66 or 70 (administrative requirements for grants and cooperative agreements) and also specifically assures and certifies all items as written in the attached Addendum A “Standard Assurances and Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; And Drug-Free Workplace Requirements”

Section3.

Nothing in the performance of this Agreement shall impose any liability for claims against COUNTY other than claims for which liability may be imposed by the Mississippi Tort Claims Act.

Section4.

Nothing in the performance of this Agreement shall impose any liability for claims against the CITIES other than claims for which liability may be imposed by the Mississippi Tort Claims Act.

Section5.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section6.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

City of Long Beach, Mississippi


George Bass, Mayor
Donald Frazer, Mayor Pro Tempore

ATTEST:


Clerk

**Minutes of September 19, 2023
Mayor and Board of Aldermen**

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF LONG BEACH
AND COUNTY OF HARRISON, MISSISSIPPI**

**MISSISSIPPI OFFICE OF HOMELAND SECURITY
OPERATION STONEGARDEN GRANT PROGRAM FY 2022**

County of Harrison, Mississippi

Rebecca Powers, President
Harrison County Board of Supervisors

ATTEST:

Clerk

Minutes of September 19, 2023
Mayor and Board of Aldermen

Alderman Brown made motion seconded by Alderman McCaffrey and unanimously carried to approve the following Assistance Request from Gulf Coast Public Safety Feed the Needy for \$1,500.00:



Date: August 29, 2023
To: Mayor
Board of Aldermen
From: Chief Seal
RE: Funding, Gulf Coast Public Safety Feed the Needy

City Leaders,

The Gulf Coast Public Safety Feed the Needy Program is a successful collaboration between the Public Safety Agencies in Harrison County, generous donors, and volunteers. This community outreach program, whose purpose is to provide hot meals to those less fortunate and the elderly in our communities twice a year on Thanksgiving and Christmas mornings, helps us as public servants and volunteers fulfill that civic duty to those in our communities in need.

This program has been providing hot meals for approximately twenty years on the coast, becoming a 501(C)(3) organization in Harrison County in 2015. The program has gone from feeding a few hundred people to providing over 2,700 meals in 2022. The Feed the Needy Program is only possible through donations and volunteers. Recently, funding has become an issue, and we are requesting your assistance, along with the four other cities and the county, to help support this much-needed program and continue providing hot meals during the holidays. We would genuinely appreciate the support to help us keep this program going for years to come.


William Seal
Chief of Police

COMPLETE
APPROVED
DATE 9/13/23
BY 

\$1,500. -

Alderman Bennett left the meeting at this time.

Minutes of September 19, 2023 Mayor and Board of Aldermen

Alderman Brown made motion seconded by Alderman Johnson and unanimously carried to approve the following Letter of Agreement with Overstreet & Associates for the Water & Wastewater Master Plan:

161 Lameuse St., Suite 203
Biloxi, MS 39530
228-967-7137



630 Delmas Ave., Suite B
Pascagoula, MS 39567
228-967-7137

August 28, 2023

Attn: Mayor and Board of Alderman
City of Long Beach
201 Jeff Davis Ave
Long Beach, MS 39560

**RE: City of Long Beach
Water & Wastewater Master Plan**

Mayor and Board Members:

This is a Letter Agreement for Overstreet and Associates, PLLC to provide the City of Long Beach with a master plan for utilities. The components of the master plan will include the Water system and the Wastewater System. The following 6-step process shall be used to the development of each component of the Master Plan.

1. Using existing data, develop a high-level cost estimate for improvements
2. Establish baseline by determine the state of the existing system.
3. Determine current and future system/infrastructure needs.
4. Outline a plan to expand and improve the systems to meet needs.
5. Identify projects and priorities.
6. Develop an implementation schedule.

Information to be provided by the City:

- Previous studies of the water and wastewater systems.
- GIS mapping and/or plans of city water, wastewater and drainage systems including location, conduit sizes, pump capacities, materials, and design data as available.
- Zoning maps and ordinances, plans for existing and proposed subdivisions and other developments, census data and/or other population growth projection data.
- Listing of all residential, commercial, and other developed properties along with information on current utility service customers.
- Wastewater flows and water usage data. Access to the SCADA system or printout of SCADA inputs, settings and measured data including well step tests and pump station drawdown tests.

Services to be provided by the Consultant:

STEP 1: Preliminary Assessment

A preliminary assessment will be made based on data and known conditions. This assessment will identify general locations and magnitude of infrastructure improvements needed. A high-level estimate of the cost of needed improvements for each component of the infrastructure will be developed.

STEP 2: Baseline Establishment

Minutes of September 19, 2023 Mayor and Board of Aldermen

161 Lameuse St., Suite 203
Biloxi, MS 39530
228-967-7137



**OVERSTREET
& ASSOCIATES**
CONSULTING ENGINEERS

630 Delmas Ave., Suite B
Pascagoula, MS 39567
228-967-7137

- **Wastewater System**

All available information shall be reviewed related to City of Long Beach wastewater system in the study area. This includes the review of the available flow data for the wastewater pumping stations, review of flow data at treatment plants, review of system maps, plans & design packages, system survey reports, operation data reports, compliance monitoring data, and any other information deemed applicable. It may also include physically inspecting the wastewater system, interviewing city personnel, and collecting any data not received from the city. The study area will be subdivided into specific wastewater basins.

- **Water System**

All available information shall be reviewed related to City of Long Beach drinking water system in the study area. This includes review and limited updates & use of the City's existing water model, review of system maps, plans & design packages, system survey reports, flow and pressure data, operation data reports, compliance monitoring data, and any other information deemed applicable. The review of information may include physically inspecting the water system, interviewing city personnel, and collecting any data not received from the city.

STEP 3: Determination of Current and Future Needs

- **Wastewater System**

Current unserved areas will be identified, and potential connections will be quantified. Also, the capacity of the wastewater mains will be evaluated based upon expected flows developed in Step 1 above, analysis criteria, downstream conditions and slope and size of the piping. Existing and future wastewater flows and groundwater inflow & infiltration will be projected.

- **Water System**

Current unserved areas will be identified, and potential connections will be quantified. Areas for expansion of the existing distribution system will be identified. The capacity of the city and wells, storage volume of existing tanks and supply of Harrison County Utility Authority water at custody transfer stations will be evaluated through the model based on the proposed expansion.

STEP 4: Planning

Using data collected in Step 1 needs identified in Step 2, a detailed plan will be developed and analyzed for each component of the infrastructure. The overall plan will be developed to maximize the use of existing infrastructure and minimize overall cost of construction and maintenance. Coordination with local, state and/or federal government agencies, as well as utility companies for preliminary permitting will also take place during the planning phase. An updated overall cost estimate will be provided upon completion of the detailed plan.

STEP 5: Project Identification and Prioritization

Individual projects will be delineated so that each project is a "standalone" project sized in a manner as fit within reasonable budgets and to maximize the potential for competitive bidding and efficient construction. Conceptual level cost estimates will be developed for each individual project which includes construction, engineering, right-of-way and/or easement acquisition and construction inspection. Projects will be prioritized based on cost/benefit analysis and logical phasing to minimize rework and inconvenience to the residents and travelling public.

Minutes of September 19, 2023 Mayor and Board of Aldermen

161 Lameuse St., Suite 203
Biloxi, MS 39530
228-967-7137



**OVERSTREET
& ASSOCIATES**
CONSULTING ENGINEERS

630 Delmas Ave., Suite B
Pascagoula, MS 39567
228-967-7137

STEP 6: Implementation Schedule

Based on funding available and project prioritization, an implementation schedule will be developed that identifies key dates and project timelines.

Final Deliverable

The final deliverable will be a summary report outlining the findings, items included in the report will generally follow the outline below.

TABLE OF CONTENTS

- Introduction
 - Background
 - Summary of Available Documentation
 - Objectives
- Study Parameters
 - Service Population
 - Study Area
 - Land Use
 - Regulatory and other Compliance requirements
 - Infrastructure Management Tools
- Wastewater System
 - Existing Wastewater System
 - Determination of Current and Future Needs
 - Capital Improvements Plan
- Water System
 - Existing Water System
 - Determination of Current and Future Needs
 - Capital Improvements Plan
- Prioritization of Projects and Implementation Schedule
 - Prioritization Criteria
 - Tiered Project Priorities
 - Conceptual Level Cost Estimates
 - Recommended Implementation Plan and Schedule for Capital Projects

Schedule

The time periods for the performance of services as set forth herein shall be as follows: Steps 1 and 2 will be completed within 3 months of execution of contract. Steps 3 through 6 will be completed within 12 months.

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Mayor and Board of Aldermen

161 Lameuse St., Suite 203
Biloxi, MS 39530
228-967-7137



**OVERSTREET
& ASSOCIATES**
CONSULTING ENGINEERS

630 Delmas Ave., Suite B
Pascagoula, MS 39567
228-967-7137

Payments to the Engineer

Overstreet and Associates will provide the above services for a fixed fee of \$100,000. Progress billing will be monthly with each step billed at the following amounts:

STEP 1: Preliminary Assessment \$17,000

STEP 2: Baseline Establishment \$17,000

STEP 3: Determination Needs \$17,000

STEP 4: Planning \$19,000

STEP 5: Project Prioritization \$17,000

STEP 6: Implementation Schedule \$13,000

Services proposed in this Letter Agreement shall be provided in accordance with Exhibit A, "General Terms and Conditions," which is attached to and made a part of this Letter Agreement. This Letter consisting of five pages and Exhibit A consisting of four pages represent the entire agreement between Overstreet and Associates, PLLC and the City of Long Beach. This Letter Agreement may only be modified or amended by a duly executed written document. If the terms and conditions of this Letter Agreement are acceptable, please execute the original and the copy and return the copy to us.

Should you have any questions or need any additional information, please do not hesitate to call.

Sincerely,

F. Jason Overstreet, P.E.

JO:LB Master Plan
Attachment

Minutes of September 19, 2023

Mayor and Board of Aldermen

EXHIBIT A GENERAL TERMS AND CONDITIONS

1. **Relationship between OVERSTREET AND ASSOCIATES, PLLC (Hereafter, "ENGINEER") and City of Long Beach (Hereafter, "Client").** ENGINEER shall serve as Client's professional engineering consultant in those phases of the Project to which this Professional Services Agreement applies. ENGINEER shall not be considered to be the employee of the Client and shall always be considered an independent contractor of the Client. The relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.

Client shall examine all documents presented by ENGINEER, obtain advice of an attorney or other consultant as Client deems appropriate for such examinations and provide decisions pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
2. **Responsibility of the ENGINEER.** ENGINEER will perform services under this Agreement in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any agreement between the Client and any other party concerning the Project, the ENGINEER shall not have control of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction; or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the ENGINEER be responsible for the acts or omissions of the Client, or for the failure of the Client, any contractor or subcontractor, or any other engineer, architect or consultant not under contract to the ENGINEER to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project.

ENGINEER shall determine the amount owing the construction contractor and recommend in writing payments to the contractor in such amounts. By recommending any payment, the ENGINEER will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made to check the quality or quantity of the contractor's work.
3. **Responsibility of the Client.** Client shall provide all criteria and full information as to his requirements for the Project, including budgetary limitations. Client shall arrange for ENGINEER to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project.

Client shall give prompt written notice to the ENGINEER whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or nonconformance in the work or any construction contractor.
4. **Designation of Authorized Representatives.** Each party shall designate one or more persons to act with authority in its behalf with respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the party.
5. **Ownership of Documents.** Drawings, specifications, reports, and any other documents prepared by ENGINEER in connection with any or all of the services furnished hereunder shall be the property of ENGINEER. ENGINEER shall have the right to retain copies of all documents and drawings for its files.
6. **Reuse of Documents.** All documents, including drawings and specifications furnished by ENGINEER pursuant to this Agreement, are intended for use on the Project only. Client agrees they should not be used by Client or others on extensions of the Project or on any other project. Any reuse, without written verification or adaptation by ENGINEER, shall be at Client's sole risk, and Client shall indemnify and hold harmless ENGINEER from all claims damages, losses and expenses, including attorney's fees arising out of or resulting therefrom.
7. **Opinions of Cost.** Since the ENGINEER has no control over the cost of labor, materials, equipment or services furnished by the contractor, or over contractor's methods of determining prices, or over competitive bidding or market conditions, the ENGINEER cannot and does not guarantee that proposals, bids or actual construction costs will not vary from his opinions or estimates of construction cost.
8. **Changes.** Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments; and ENGINEER and Client shall negotiate appropriate adjustments in fee and/or schedule acceptable to both parties to accommodate any changes and Additional Services.
9. **Delays.** If the ENGINEER's services are delayed by the Client, or for other reasons beyond the ENGINEER's control, for more than 180 days, the fee provided for in this Agreement shall be adjusted equitably.
10. **Subcontracts.** ENGINEER may subcontract portions of the services, but each subcontractor must be approved by Client in writing.
11. **Suspension of Services.** Client may, at any time, by written order to ENGINEER, require ENGINEER to stop all, or any part, of

Minutes of September 19, 2023 Mayor and Board of Aldermen

OVERSTREET AND ASSOCIATES PLLC

GENERAL TERMS AND CONDITIONS

- the services required by this Agreement. Upon receipt of such and order, ENGINEER shall immediately comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the services covered by the order. Client, however, shall pay all costs associated with suspension including all costs necessary to maintain continuity and the staff required to resume the services upon expiration of the suspension of work order. ENGINEER will not be obligated to provide the same personnel employed prior to suspension when the services are resumed in the event the period of any suspension exceeds 30 days. Client will reimburse ENGINEER for the costs of such suspension and remobilization.
12. **Termination.** This Agreement may be terminated by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by ENGINEER either before or after the termination date shall be reimbursed by Client.
13. **Notices.** Any notice or designation required to be given by either party hereto shall be in writing and, unless receipt of such notice is expressly required by the terms hereof, it shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereinafter furnish to the other party by written notice as herein provided.
14. **Indemnification.** To the extent not prohibited by law, and in any case to be construed in a fashion that does not waive governmental, sovereign, or official immunities where applicable, each party to this Agreement shall be, to that extent, responsible for all claims and losses, liability, penalties, damages, or other expenses of any kind whatsoever, resulting from any negligent performance or breach of that party's obligations under this Agreement committed by that party or any of its employees or agents for whom the party is legally responsible. Each party shall provide for legal defense for claims against that party or its agents or employees for whom the party is legally responsible.
15. **Legal Proceedings.** In the event ENGINEER's employees are at any time required by Client to provide testimony, answer interrogatories or otherwise provide information ("testimony") in preparation for or at a trial, hearing, proceeding on inquiry ("proceeding") arising out of the services that are the subject of this Agreement, where ENGINEER is not a party to such proceeding, Client will compensate ENGINEER for its services and reimburse ENGINEER for all related direct costs incurred in connection with providing such testimony. This provision shall be of no effect if the parties have agreed in a separate agreement or an amendment to this Agreement to terms which specifically supersede this provision, nor shall this provision apply in the event Client engages ENGINEER to provide expert testimony or litigation support, which services shall be the subject of a separate agreement or an amendment to this Agreement.
16. **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
17. **Insurance.** ENGINEER shall maintain workmen's compensation and unemployment compensation for its direct employees of a form and in an amount as required by state law. ENGINEER shall endeavor to maintain comprehensive general liability insurance, automotive liability, and professional liability insurance. Client recognizes that the insurance market is erratic, and ENGINEER cannot guarantee to maintain the coverages identified above, except to the extent required by law.
18. **Information Provided by the Client.** The ENGINEER shall indicate to the Client the information needed for rendering of services hereunder. The Client may elect to provide this information (including services by others) to the ENGINEER. In this case, the Client recognizes that the ENGINEER cannot assure the sufficiency of such information. Accordingly, the ENGINEER shall not be liable for any claims for injury or loss arising from errors, omissions or inaccuracies in documents or other information provided by the Client. In addition, the Client agrees to compensate the ENGINEER for any time spent or expenses incurred in defending such claim or in making revisions to his work as a direct or indirect result of information provided by the Client which is insufficient or inaccurate.
19. **Subsurface Conditions and Utilities.** Client recognizes that a comprehensive sampling and testing program implemented by trained and experienced personnel of ENGINEER or ENGINEER's subconsultants with appropriate equipment may fail to detect certain hidden conditions. Client also recognizes that actual environmental, geological, and geotechnical conditions that ENGINEER properly inferred to exist between sampling points may differ significantly from those that actually exist.
- ENGINEER will locate utilities which will affect the project from information provided by the Client and utility companies and from ENGINEER's surveys. In that these utility locations are based, at least in part, on information from other, ENGINEER cannot and does not warrant their completeness and accuracy.
20. **Hazardous Materials.** When hazardous materials are known, assumed or suspected to exist at a project site, ENGINEER is required to take appropriate precautions to protect the health and safety of his personnel, to comply with the applicable laws and regulations and to follow procedures deemed prudent to minimize physical risks to employees and the public. Client hereby warrants that, if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site, he will inform ENGINEER in writing prior to initiation of services under this Agreement.

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Mayor and Board of Aldermen

OVERSTREET AND ASSOCIATES PLLC

GENERAL TERMS AND CONDITIONS

- Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Client agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. ENGINEER agrees to notify Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. Client waives any claim against ENGINEER and agrees to indemnify, defend and hold ENGINEER harmless from any claim or liability for injury or loss arising from ENGINEER's encountering unanticipated hazardous materials or suspected hazardous materials. Client also agrees to compensate ENGINEER for any time spent and expenses incurred by ENGINEER in defense of any such claim.
21. **Risk Allocation.** N/A
 22. **Anticipated Change Orders.** Client recognizes and expects that a certain amount of imprecision and incompleteness is to be expected in construction contract documents; that contractors are expected to furnish and perform work, materials and equipment that may be reasonable by inferred from the contract documents or from the prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for; and that a certain amount of change order are to be expected. As long as ENGINEER provides services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions, Client agrees not to make any claim against ENGINEER for cost of these change orders unless these costs become a significant part of the construction contract amount. In no case will Client make claim against ENGINEER for costs incurred if the change order work is a necessary part of the Project for which Client would have incurred cost if work had been included originally in the contract documents unless Client can demonstrate that such costs were higher through issuance of the change order than they would have been if originally included in the contract documents in which case any claim of Client against ENGINEER will be limited to the cost increase and not the entire cost of the change order.
 23. **Payment.** ENGINEER shall submit monthly statements to Client. Payment in full shall be due upon receipt of the invoice. If payments are delinquent after 45 days from invoice date, the Client agrees to pay interest on the unpaid balance at the rate of one percent (1%) per month. Payment for ENGINEER's services is not contingent on any factor except ENGINEER's ability to provide services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.
 24. **Force Majeure.** Neither Client nor ENGINEER shall be liable for any fault or delay caused by and contingency beyond their control, including, but not limited to, acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
 25. **Compliance with Laws.** To the extent they apply to its employees or its services, the ENGINEER shall comply with all applicable United States, state, territorial and commonwealth laws, including ordinances of any political subdivisions or agencies of the United States, any state, territory or commonwealth thereof.
 26. **Separate Provision.** If any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding.
 27. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi.
 28. **Dispute Resolution.** All disputes, controversies or claims, of whatever kind or character, between the Parties, their agents and/or principals, arising out of or in connection with the subject matter of this Agreement shall be litigated in no other venue other than the Circuit Court of Harrison County, Mississippi, or the United States District Court which includes within its geographical Division, Harrison County, Mississippi; and shall be litigated only before a judge hearing the matter alone, as both finder of fact and law, without a jury.
 29. **Additional Services.** Services resulting from significant changes in the general scope, extent or character of the Project designed or specified by ENGINEER or its design including, but not limited to, changes in size, complexity, Client's schedule, construction schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to other causes beyond ENGINEER's control.
 30. **Amendment.** This Agreement shall not be subject to amendment unless another instrument is executed by duly authorized representatives of each other parties.
 31. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and ENGINEER hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereto that conflict with the terms of this Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.
 32. **Separate Provisions.** The provisions of this Agreement shall continue to be binding upon the parties hereto notwithstanding termination of this Agreement for any reason.

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Mayor and Board of Aldermen

- 33. **Nonwaiver.** No waiver by a party of any provision of this Agreement shall be deemed to have been made unless in writing and signed by each party.
- 34. **Conflicting Terms.** In the event that there are multiple agreements with varying or conflicting terms and conditions between Client and ENGINEER, the Terms and Conditions contained in this Agreement shall supersede and have precedence over any other terms and conditions contained in any other written or oral agreement entered into between Client and ENGINEER that either actually do or appear to conflict with the Terms and Conditions contained in this Agreement, regardless of when, in relationship to these Terms and Conditions contained in this Agreement, such other written or oral agreements was actually entered into between Client and ENGINEER.
- 35. **Course of Dealing.** Client and ENGINEER agree that these General Terms and Conditions establish a course of dealing between them and shall apply to this and all other services, projects, agreements or dealings between them, unless Client or ENGINEER gives the other written notice of objection to any term or condition before commencement of performance in connection with any other provision of services or projects involving the two of them.

* * * * *

Minutes of September 19, 2023 Mayor and Board of Aldermen

Alderman Brown made motion seconded by Alderman Parker and unanimously carried to approve the following contract with Overstreet & Associates for Lang Ave. Pump Station Improvements, and authorize the Mayor Pro Tempore to execute same:

SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT, effective as of September 19, 2023 ("Effective Date") between City of Long Beach ("Owner") and Overstreet & Associates, PLLC ("Engineer").

Engineer agrees to provide the services described below to Owner for the installation of new components for the Lang Ave. pump station, including pumps, piping, valves, controls, and a blind flange/bypass pipe, along with other miscellaneous improvements to the pump station, all more generally described as "Lang Ave. Pump Station Improvements (2023)" (2023). ("Project")

Description of Engineer's Services: Provide design services for the Project, including the creation of Bid Documents, coordination with the City during the Bid process, acquisition of any needed permits, and other miscellaneous professional services, construction administration services, and construction inspection services needed to complete the work.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

- A. *Preparation of Invoices.* Engineer will prepare a monthly Invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.
- B. *Payment of Invoices.* Invoices are due and payable within 45 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law) from said forty-fifth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

- A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.
- B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

4.01 Termination

- A. The obligation to provide further services under this Agreement may be terminated:

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EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services
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Minutes of September 19, 2023 Mayor and Board of Aldermen

1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 2. For convenience, by Owner effective upon the receipt of notice by Engineer.
- B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- 5.01 Controlling Law**
- A. This Agreement is to be governed by the law of the state in which the Project is located.
- 6.01 Successors, Assigns, and Beneficiaries**
- A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. 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 this Agreement.

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7.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.
- B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.
- C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.
- D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.
- E. The general conditions for any standard design/bid construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).
- F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.
- G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 Total Agreement

- A. This Agreement (consisting of pages 1 to 7 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

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EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services
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Minutes of September 19, 2023 Mayor and Board of Aldermen

9.01 Payment

- A. Based on the current expected construction cost of approximately \$130,000, and following the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:
1. **Basic Services.**
 - a. Basic Services will be compensated on a lump sum amount of \$20,000, based on the following assumed distribution of compensation:

Design Phase	37.5%
Bidding and Negotiating Phase	7.5%
<u>Construction Phase</u>	<u>55%</u>
Total	100%
 2. **Topographical Surveys.**
 - a. No topographical surveys are anticipated for this project.
 3. **Construction Inspection Services.**
 - a. Resident Project Representative Services and Post Construction Services. For services of ENGINEER's Resident Project Representative, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.
 - b. It is expected that the construction of this project will take up to 5 weeks. Total fees for construction inspection services are currently estimated at \$17,000. This total fee will not be exceeded without prior written authorization.
- B. **Hourly Rates for services billed on the basis of time.**
1. The Engineer's Standard Hourly Rates are attached as Appendix 1.
 2. Overtime pay (i.e., hours spent on the project in excess of 40 hours per calendar week), if any, for non-exempt employees shall be paid at an amount equal to the cumulative overtime hours charged times 1.5 multiplied by the standard hourly rates for each applicable billing class for all services performed during overtime hours.
 3. The Standard Hourly Rates may be adjusted annually (as of January 2024) to reflect equitable changes in the compensation payable to the ENGINEER.
- C. Engineer shall prepare and submit invoices to the Owner in accordance with Engineer's standard accounting and Invoicing practices.
- D. Engineer may adjust compensation percentages for the various phases of Basic Services for payment, but will not exceed the total Basic Services fee without authorization.

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EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services
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Minutes of September 19, 2023 Mayor and Board of Aldermen

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: City of Long Beach

ENGINEER: Overstreet & Associates, PLLC.

By: 
George Bass ~~Donald Frazer~~
Mayor *Pro Tempore*

By: 
F. Jason Overstreet, P.E.
President

Date Signed: 9/19/23

Date Signed: 8/31/2023
License No./State: 18601/MS

Address for giving notice:
P.O. Box 929
Long Beach, MS 39560

Address for giving notice:
161 Lameuse St., Suite 203
Biloxi, MS 39530

Minutes of September 19, 2023
 Mayor and Board of Aldermen

Appendix 1

OVERSTREET & ASSOCIATES
 STANDARD HOURLY RATES SCHEDULE
 EFFECTIVE JANUARY 1, 2023

<u>Position</u>	<u>Billing Rate</u>
Principal.....	\$195.00
Professional Engineer V	\$173.50
Professional Engineer IV	\$168.00
Professional Engineer III.....	\$152.50
Professional Engineer II	\$142.00
Professional Engineer I.....	\$131.50
Engineer Intern III.....	\$126.00
Engineer Intern II.....	\$110.50
Engineer Intern I.....	\$100.00
Professional Land Surveyor.....	\$126.00
Senior Project Manager.....	\$131.50
Construction Project Manager	\$110.50
Sr. Survey Crew Chief	\$94.50
Resident Project Representative III	\$95.00
Resident Project Representative II	\$87.00
Resident Project Representative I	\$79.00
CADD Technician III/Designer.....	\$100.00
CADD Technician II	\$89.50
CADD Technician I	\$79.00
GIS Intern.....	\$58.00
Project Technician	\$78.00
Administrative/Clerical.....	\$68.50
Surveys with RTK GPS Equipment	\$31.50
Survey Project Manager/Land Surveyor Intern.....	\$105.00
Survey Technician II.....	\$79.00
Survey Technician I.....	\$63.00
Survey Crew III.....	\$184.00
Survey Crew II.....	\$136.50
Survey Crew I.....	\$115.50

Travel Time shall be billed at designated personnel's standard hourly rates.

OVERSTREET & ASSOCIATES, PLLC.
 ENGINEER'S CONSULTANTS AND
 REIMBURSABLE EXPENSE SCHEDULE

Engineer's Consultants: Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges will be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.20.

Reimbursable Expense Schedule:

Mileage (Outside Harrison County area)	Current IRS rate
Meals and Lodging (Outside Harrison County area)	At Cost

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Mayor and Board of Aldermen**

Appendix 1

Overnight Postage	At Cost
Copies	
Letter, Legal or Tabloid Size – Black and White	\$0.20/page
Letter, Legal or Tabloid Size – Color	\$0.50/page
24" x 36"	\$2.00/sheet
30" x 42"	\$3.00/sheet

**Minutes of September 19, 2023
Mayor and Board of Aldermen**

Alderman Parker made motion seconded by Alderman McGoey and unanimously carried to approve the following Addendum to Extend Time with Overstreet & Associates for the Pineville Road Sidewalks Phase II, and authorize the Mayor Pro Tempore to execute same:



overstreeteng.com
161 Lameuse St, Suite 203
Biloxi, MS 39530
228.967.7137

September 7, 2023

City of Long Beach
P.O. Box 929
Long Beach, MS 39560

**RE: Pineville Road Road Sidewalk Phase II
STP-9083-00(002)LPA/107918-701000**

Ladies and Gentlemen:

As you are aware, Overstreet & Associates has been working on the design of the referenced project, including the process of needed right-of-way acquisition, which is a lengthy process. In order to facilitate continued work on this project, we request that the Contract time be extended to June 30, 2024. This request will not alter or modify the goals or objectives of the project, the scope of work, or the maximum compensation allowed for this CONTRACT. In order to meet MDOT requirements, this agreement will be effective starting June 29, 2022, as is indicated on the attached official contract modification.

Sincerely,

David Ball, P.E.

DB:1045

Minutes of September 19, 2023 Mayor and Board of Aldermen

ADDENDUM TO EXTEND TIME
LPA PROFESSIONAL SERVICES CONTRACT
BY AND BETWEEN
City of Long Beach
& *Overstreet & Associates, PLLC*

This Addendum is made a part of that Professional Services Contract entered into by and between *City of Long Beach* (known as the "LPA") and *Overstreet & Associates, PLLC* (Known as the "CONSULTANT"), whose address is *161 Lameuse Street, Suite 203, Biloxi, MS 39530* signed by CONSULTANT on *May 19, 2020*, and signed by LPA on May 19, 2020

WHEREAS, in consideration of the agreement of the Parties hereto to modify the original Professional Services Contract between them, the *City of Long Beach* and *Overstreet & Associates, PLLC*, do by entering into this Addendum mutually agree to amend ARTICLE III. CONTRACT TERM of the original contract as aforescribed herein, in order to extend the Contract Term or period of performance of the Professional Services Contract for an additional thirty-six (36) months, and said Professional Services Contract is amended as set out below:

ARTICLE III. CONTRACT TERM: The CONTRACT ending date as shown in this Article for *Overstreet & Associates, PLLC* for *Pineville Road Sidewalk Phase II, STP-9083-00 (002)LPA/107918-70100, Harrison County* will change from *June 29, 2022, at 11:59 P.M.* to *June 30, 2024, at 11:59 P.M.*

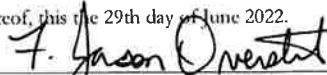
Except as provided herein, all other terms and conditions set forth in the original Professional Services Contract of the parties, and not in conflict with this Addendum, shall remain in full force and effect.

WITNESS this my signature in execution hereof, this the 29th day of June 2022.



Mayor George L. Bass
Mayor Pro Tempore Donald Frazer

WITNESS this my signature in execution hereof, this the 29th day of June 2022.



F. Jason Overstreet, P.E.

Attested By:



Address: 161 Lameuse St. Ste 203
Biloxi, MS 39530

Minutes of September 19, 2023
Mayor and Board of Aldermen

Alderman Parker made motion seconded by Alderman Johnson and unanimously carried to approve the following Addendum to Extend Time with Overstreet & Associates for the Pineville Road Sidewalks Phase III, and authorize the Mayor Pro Tempore to execute same:



overstreeteng.com
 161 Lameuse St. Suite 203
 Biloxi, MS 39530
 228.967.7137

September 7, 2023

City of Long Beach
 P.O. Box 929
 Long Beach, MS 39560

RE: Pineville Road Road Sidewalk Phase III
STP-9083-00(003)LPA/108636-701000

Ladies and Gentlemen:

As you are aware, Overstreet & Associates has been working on the design of the referenced project, including the process of needed right-of-way acquisition, which is a lengthy process. In order to facilitate continued work on this project, we request that the Contract time be extended to June 30, 2024. This request will not alter or modify the goals or objectives of the project, the scope of work, or the maximum compensation allowed for this CONTRACT. In order to meet MDOT requirements, this agreement will be effective starting June 29, 2022, as is indicated on the attached official contract modification.

Sincerely,

David Ball, P.E.

DB:1045

O:\1147-A - LB Pineville SW PH III (Design Phase)\Eng Agree\Time Extension\20230907 1147 Time Extension.docx
 Page 1/1

Biloxi | Long Beach | Pascagoula | Daphne

Minutes of September 19, 2023 Mayor and Board of Aldermen

ADDENDUM TO EXTEND TIME
LPA PROFESSIONAL SERVICES CONTRACT
BY AND BETWEEN
City of Long Beach
& *Overstreet & Associates, PLLC*


This Addendum is made a part of that Professional Services Contract entered into by and between *City of Long Beach* (known as the "LPA") and *Overstreet & Associates, PLLC* (Known as the "CONSULTANT"), whose address is *161 Lameuse Street, Suite 203, Biloxi, MS 39530* signed by CONSULTANT on *August 23, 2021*, and signed by LPA on *August 23, 2021*.

WHEREAS, in consideration of the agreement of the Parties hereto to modify the original Professional Services Contract between them, the *City of Long Beach* and *Overstreet & Associates, PLLC*, do by entering into this Addendum mutually agree to amend ARTICLE III. CONTRACT TERM of the original contract as aforescribed herein, in order to extend the Contract Term or period of performance of the Professional Services Contract for an additional *twenty-four (24) months*, and said Professional Services Contract is amended as set out below:

ARTICLE III. CONTRACT TERM: The CONTRACT ending date as shown in this Article for *Overstreet & Associates, PLLC* for *Pineville Road Sidewalk Improvements Phase III, STP-9083-00(003)LPA/108636-701000, Harrison County* will change from *June 30, 2022, at 11:59 P.M.* to *June 30, 2024, at 11:59 P.M.*

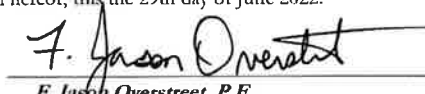
Except as provided herein, all other terms and conditions set forth in the original Professional Services Contract of the parties, and not in conflict with this Addendum, shall remain in full force and effect.

WITNESS this my signature in execution hereof, this the 29th day of June 2022.



Mayor George L. Bass
Mayor Pro Tempore Donald Frazer

WITNESS this my signature in execution hereof, this the 29th day of June 2022.



F. Jason Overstreet, P.E.

Attested By:


Address: 161 Lameuse St. Ste 203
Biloxi, MS 39530

Alderman McCaffrey made motion seconded by Alderman Parker and unanimously carried to authorize the installation of 4 10-foot poles between City Hall and the Library to hang holiday lights and ornaments.

Community Affairs Director Courtney Cuevas announced the following events:

- Citywide Fall Sidewalk Sale – September 23, 2023
- Taste of Long Beach – September 28, 2023
- Cruisin’ the Coast Parade – October 2, 2023

Minutes of September 19, 2023
Mayor and Board of Aldermen

There came on for discussion derelict property at 625 W. Old Pass Road, assessed to Jesse E. McCurrie & Jesse E. McCurrie Jr., whereupon it was the consensus of the Board for City Attorney Simpson and Police Chief Seal to assist Building Official Mike Gundlach in condemnation of the foregoing property due to it not having power or water utilities.

The Mayor Pro Tempore recognized the City Attorney for his report, whereupon no action was required or necessary.

There being no further business to come before the Mayor and Board of Aldermen at this time, Alderman Parker made motion seconded by Alderman Brown and unanimously carried to adjourn until the next regular meeting in due course.

APPROVED:

Alderman Donald Frazer, At-Large

Alderman Patrick Bennett, Ward 1

Alderman Bernie Parker, Ward 2

Alderman Angie Johnson, Ward 3

Alderman Timothy McCaffrey, Jr., Ward 4

Alderman Mike Brown, Ward 5

Alderman Pete L. McGoey, Ward 6

Date

ATTEST:

Kini Gonsoulin, Deputy City Clerk