

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

MUNICIPAL DOCKET
REGULAR MEETING OF OCTOBER 1, 2019
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
 - 1. 521 LaPlace Dr.; assessed to Todd L. Babin
 - 2. 523 LaPlace Dr.; assessed to Norrene O'Malley
- V. ANNOUNCEMENTS; PRESENTATIONS; PROCLAMATIONS
 - 1. Proclamation – Domestic Violence Awareness Month
- VI. AMENDMENTS TO THE MUNICIPAL DOCKET
- VII. APPROVE MINUTES:
 - 1. MAYOR AND BOARD OF ALDERMEN
 - a. September 17, 2019 – Regular & Executive Session
 - 2. PLANNING & DEVELOPMENT COMMISSION
 - a. September 26, 2019 – Regular
 - 3. PORT COMMISSION
 - a. September 19, 2019 - Regular
- VIII. APPROVE DOCKET OF CLAIMS NUMBER(S):
 - 1. 100119
- IX. UNFINISHED BUSINESS
 - 1. Franchise Agreements – C Spire & Southern Light
 - 2. Contract – GSE Consulting Engineers; Inspection Engineering Services
 - 3. Planning & Development Commission Appointment – Ward 2
 NEW BUSINESS
 - 1. Advertise for School Board Appointment Resumes
 - 2. Certificate of Attendance – Court Clerk Emma Ward
 - 3. Municipal Compliance Questionnaire Fiscal Year 2019
 - 4. Permission to Sell Beer at Cruisin The Coast – Rotary Club of Edgewater MS
 - 5. Special Event App & Fee Waiver – First Baptist Church; Trunk or Treat
 - 6. Special Event App & Fee Waiver – Carnival Assoc; Halloween Jubilee
 - 7. Contract – Networking Services; AGJ
 - 8. Resolution – Appointing Civil Service Attorney; Haley Broome
 - 9. Grant Acceptance – Hazard Mitigation Grant Program; Rita Lane Acquisition
 - 10. Grant Acceptance – MDOT Bus Grant
 - 11. Grant Acceptance – MDOT Senior Citizen Transportation Grant
 - 12. Flood Area Letter – Building Office
 - 13. Grant Agreement – Drainage Work Espy to 28th Street
 - 14. Amended and Restated Lease Agreement; Long Beach Harbor Resorts, LLC
- X. DEPARTMENTAL BUSINESS
 - 1. MAYOR'S OFFICE
 - 2. PERSONNEL
 - a. Fire Dept – Step Increase (2)
 - b. Police Dept – CTO Pay (1); Resignation (1); New Hire (1)
 - 3. CITY CLERK
 - 4. FIRE DEPARTMENT
 - 5. POLICE DEPARTMENT
 - 6. ENGINEERING
 - a. Contract – Clower Ave Water System Improvements; Lagniappe Construction
 - 7. PUBLIC WORKS
 - 8. RECREATION
 - 9. DERELICT PROPERTIES
- XI. REPORT FROM CITY ATTORNEY
- XII. ADJOURN (OR) RECESS

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Mayor and Board of Aldermen**

Be it remembered that two public hearings before the Mayor and Board of Aldermen, Long Beach, Mississippi, were begun and held, at 5:00 o'clock p.m., Tuesday, the 1st day of, 2019, in the Long Beach City Hall Meeting Room, 201 Jeff Davis Avenue, in said City, and the same being the time, date and place fixed by order of the Mayor and Board of Aldermen for holding said public hearings.

There were present and in attendance on said board and at the meeting the following named persons: Mayor George L. Bass, Aldermen Donald Frazer, Ronald Robertson, Bernie Parker, Kelly Griffin, Timothy McCaffrey, Jr., Mark E. Lishen, Patricia Bennett, Deputy City Clerk Kini Gonsoulin, and City Attorney James C. Simpson, Jr.

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

The first public hearing was called to order to determine whether or not a parcel of property situated in the City of Long Beach, located at 521 LaPlace Drive and assessed to Todd L. Babin, Map Parcel #0612A-03-061.003, is in such a state of uncleanliness as to constitute a menace to the public health and safety of the community.

The Mayor recognized the Deputy City Clerk for her report, whereupon Alderman Frazer made motion seconded by Alderman Griffin and unanimously carried to make said report a part of the record of this public hearing, as follows:

- The Clerk reported that, the Mayor and Board of Aldermen at a regular meeting duly held on September 3, 2019, she did cause to be sent, via certified mail, electronic receipt requested, Notice of Hearing, to Todd L. Babin, 617 Carmadelle Street, Marrero, LA, as the same appears of record on the Harrison County 2018 Official Real Property Tax Rolls. The letter was not able to be tracked by the Post Office.

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City of Long Beach

BOARD OF ALDERMEN
Donald Frazer - At-Large
Ronald Robertson - Ward 1
Bernie Parker - Ward 2
Kelly Griffin - Ward 3
Timothy McCaffrey, Jr. - Ward 4
Mark E. Lishen - Ward 5
Patricia Bennett - Ward 6



GEORGE L. BASS
MAYOR

CITY CLERK
TAX COLLECTOR
Stacey Dahl

CITY ATTORNEY
James C. Simpson, Jr.

September 4, 2019

MAILED
Date: 9/4/19

Todd L. Babin
617 Carmadelle St.
Marrero, LA 70072

91 7199 9991 7036 0717 8768

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Mayor and Board of Aldermen of The City of Long Beach, Mississippi, will, in accordance with motion duly made, seconded and adopted at its regular meeting September 3, 2019, hold a public hearing at 5:00 p.m., **Tuesday, October 1, 2019**, at the Long Beach City Hall Meeting Room, 201 Jeff Davis Avenue, Long Beach, Mississippi, to determine whether or not a parcel of land owned by and/or assessed to Todd L. Babin, and situated in the City of Long Beach, Mississippi, at 521 La Place Dr., is in such a state of uncleanness as to be a menace to the public health and safety of the community, all in accordance with Section 21-19-11 of the Mississippi Code of 1972, as amended. Said property is more particularly described, as follows:

Address: 521 La Place Drive
Parcel Number: 0612A-03-061.003
Legal Description: UNIT 3 LA PLACE DE LA MER TOWNHOUSES

If at such hearing, the governing authority shall, in its resolution, adjudicate such parcel of land in its then condition to be a menace to the public health and safety of the community, the governing authority shall, if the owner does not do so himself, proceed to clean the land, by the use of municipal employees or by contract, by cutting weeds; filling cisterns; removing rubbish, dilapidated fences, outside toilets, dilapidated buildings and other debris; filling swimming pools; and draining cesspools and standing water therefrom. Thereafter, the governing authority shall, at its next regular meeting, by resolution adjudicate the actual cost of cleaning the property and may also impose a penalty of One Thousand Five Hundred Dollars (\$1,500.00) or fifty (50%) of such actual cost, whichever is more. The cost and any penalty may become a civil debt against the property owner, or, at the option of the governing authority, an assessment against the property. The cost assessed against the property means the cost to the municipality of using its own employees to do the work or the cost to the municipality of any contract executed by the municipality to have the work done. The action herein authorized shall not be undertaken against any one (1) parcel of land more than six (6) times in any one (1) calendar year, and the

201 Jeff Davis • P.O. Box 929 • Long Beach, MS 39560 • (228) 863-1556 • FAX (228) 865-0822
www.cityoflongbeachms.com

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expense of cleaning of said property shall not exceed an aggregate amount of Twenty Thousand Dollars (\$20,000.00) per year, or the fair market value of the property subsequent to cleaning, whichever is less. If it is determined by the governing authority that it is necessary to clean the property or land more than once within a calendar year, then the municipality may clean it provided notice to the property owner is given by United States mail to the last known address at least ten (10) days before cleaning the property. The governing authority may assess the same penalty for each time the property or land is cleaned as otherwise provided in this section. The penalty provided herein shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a municipality clean a parcel owned by the State of Mississippi without first giving notice. In the event the governing authority declares, by resolution, that the cost and any penalty shall be collected as a civil debt, the governing authority may authorize the institution of a suit on open account against the owner of the property in court of competent jurisdiction in the manner provided by law for the cost and any penalty, plus court costs, reasonable attorney's fees and interest from the date that the property was cleaned. In the event that the governing authority does not declare that the cost and any penalty shall be collected as a civil debt, then the assessment above provided for shall be a lien against the property and may be enrolled in the office of the circuit clerk of the county as other judgments are enrolled, and the tax collector of the municipality shall, upon order of the board of governing authorities, proceed to sell the land to satisfy the lien as now provided by law for the sale of lands for delinquent municipal taxes as provided by *Section 21-19-11 Mississippi Code, Annotated.*

All decisions rendered under the provisions of this section may be appealed in the same manner as other appeals from municipal boards or courts are taken.

Done by order of the Mayor and Board of Aldermen of the City of Long Beach, Mississippi, this the 3rd day of September, 2019.



Kini Consoulin
Deputy City Clerk

- The Clerk further reported that the Notice of Hearing was posted on the subject property, 521 LaPlace Drive, Long Beach, Mississippi, on September 4, 2019, by Zoning Enforcement Officer Dale Stogner; the bulletin boards at City Hall, the Water Department, and the Building Office, 201 Jeff Davis Avenue, Long Beach, Mississippi; and the Long Beach Public Library, 209 Jeff Davis Avenue, Long Beach, Mississippi.
- The Clerk submitted a photograph of 521 LaPlace Drive, Long Beach, Mississippi taken by Zoning Enforcement Officer Dale Stogner on September 18, 2019, depicting subject property in its present condition; said photograph is as follows:

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521 LaPlace Drive

9/18/19



Minutes of October 1, 2019
Mayor and Board of Aldermen

AFFIDAVIT

STATE OF MISSISSIPPI
COUNTY OF HARRISON
CITY OF LONG BEACH

BEFORE ME, the under signed legal authority authorized to administer oaths in and for the jurisdiction aforesaid, on this day personally appeared DALE STOGNER, known to me to be the Zoning Enforcement Officer of the City of Long Beach, Mississippi, who being by me first duly sworn, deposes and says on oath as follows, to-wit:

1. That he is serving in the capacity of Zoning Enforcement Officer of the City of Long Beach, Mississippi;

2. That in such capacity, he is responsible for the posting of notices of public hearings for the purpose of determining whether or not certain properties are in such a state of uncleanliness as to constitute a menace to the public health and safety of the community; he is responsible for the taking of photographs of those certain properties to determine the state of the properties in their then condition on the date of such public hearings; and other matters pertaining to such public hearings and the business of the zoning/code enforcement in and for the City of Long Beach;

3. That on September 4, 2019, he did cause to be posted, Notice of Hearing, a copy of which is attached hereto, on property located at 521 LaPlace Drive (Tax Map Parcel 0612A-03-061.003). Long Beach, Mississippi, assessed to Todd L. Babin, and at the City Hall, 201 Jeff Davis Avenue, Long Beach, Mississippi; and that on September 18, 2019, the Zoning Enforcement Officer, Dale Stogner, did take and cause to be processed photographs depicting said property in its then condition, to be submitted as exhibits at the public hearing scheduled for October 1, 2019.

This the 1st day of October 2019.

Kini Gonsoulin
KINI GONSOULIN, AFFIANT

SWORN TO AND SUBSCRIBED before me on this the 1st day of October 2019.

-My Commission Expires-

Stacey Dahl
NOTARY PUBLIC



After discussion, Alderman Frazer made motion seconded by Alderman McCaffrey and unanimously carried to close the public hearing and take official action as follows:

Alderman Frazer made motion seconded by Alderman Griffin and unanimously carried to declare the property in compliance.

The second public hearing was called to order to determine whether or not a parcel of property situated in the City of Long Beach, located at 523 LaPlace Drive and

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assessed to Norrene O'Malley, Map Parcel #0612A-03-061.002, is in such a state of uncleanliness as to constitute a menace to the public health and safety of the community.

The Mayor recognized the Deputy City Clerk for her report, whereupon Alderman Griffin made motion seconded by Alderman McCaffrey and unanimously carried to make said report a part of the record of this public hearing, as follows:

- The Clerk reported that, the Mayor and Board of Aldermen at a regular meeting duly held on September 3, 2019, she did cause to be sent, via certified mail, electronic receipt requested, Notice of Hearing, to Norrene O'Malley, 3033 East Devonshire Ave, Phoenix, AZ, as the same appears of record on the Harrison County 2018 Official Real Property Tax Rolls. The letter was not able to be tracked by the Post Office.

City of Long Beach

BOARD OF ALDERMEN
 Donald Frazer - At-Large
 Ronald Robertson - Ward 1
 Bernie Parker - Ward 2
 Kelly Griffin - Ward 3
 Timothy McCaffrey, Jr. - Ward 4
 Mark E. Lishen - Ward 5
 Patricia Bennett - Ward 6



GEORGE L. BASS
 MAYOR

CITY CLERK
 TAX COLLECTOR
 Stacey Dahl

CITY ATTORNEY
 James C. Simpson, Jr.

September 4, 2019

MAILED
 Date: 9/4/19

Norrene O'Malley
 3033 East Devonshire Ave
 Phoenix, AZ 85016-5897

91 7199 9991 7036 0717 8775

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Mayor and Board of Aldermen of The City of Long Beach, Mississippi, will, in accordance with motion duly made, seconded and adopted at its regular meeting September 3, 2019, hold a public hearing at 5:00 p.m., Tuesday, October 1, 2019, at the Long Beach City Hall Meeting Room, 201 Jeff Davis Avenue, Long Beach, Mississippi, to determine whether or not a parcel of land owned by and/or assessed to Norrene O'Malley, and situated in the City of Long Beach, Mississippi, at 523 La Place Dr., is in such a state of uncleanliness as to be a menace to the public health and safety of the community, all in accordance with Section 21-19-11 of the Mississippi Code of 1972, as amended. Said property is more particularly described, as follows:

Address: 523 La Place Drive
 Parcel Number: 0612A-03-061.002
 Legal Description: UNIT 2 LA PLACE DE LA MER TOWNHOUSES

If at such hearing, the governing authority shall, in its resolution, adjudicate such parcel of land in its then condition to be a menace to the public health and safety of the community, the governing authority shall, if the owner does not do so himself, proceed to clean the land, by the use of municipal employees or by contract, by cutting weeds; filling cisterns; removing rubbish, dilapidated fences, outside toilets, dilapidated buildings and other debris; filling swimming pools; and draining cesspools and standing water therefrom. Thereafter, the governing authority shall, at its next regular meeting, by resolution adjudicate the actual cost of cleaning the property and may also impose a penalty of One Thousand Five Hundred Dollars (\$1,500.00) or fifty (50%) of such actual cost, whichever is more. The cost and any penalty may become a civil debt against the property owner, or, at the option of the governing authority, an assessment against the property. The cost assessed against the property means the cost to the municipality of using its own employees to do the work or the cost to the municipality of any contract executed by the municipality to have the work done. The action herein authorized shall not be undertaken against any one (1) parcel of land more than six (6) times in any one (1) calendar year, and the

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Mayor and Board of Aldermen**

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expense of cleaning of said property shall not exceed an aggregate amount of Twenty Thousand Dollars (\$20,000.00) per year, or the fair market value of the property subsequent to cleaning, whichever is less. If it is determined by the governing authority that it is necessary to clean the property or land more than once within a calendar year, then the municipality may clean it provided notice to the property owner is given by United States mail to the last known address at least ten (10) days before cleaning the property. The governing authority may assess the same penalty for each time the property or land is cleaned as otherwise provided in this section. The penalty provided herein shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a municipality clean a parcel owned by the State of Mississippi without first giving notice. In the event the governing authority declares, by resolution, that the cost and any penalty shall be collected as a civil debt, the governing authority may authorize the institution of a suit on open account against the owner of the property in court of competent jurisdiction in the manner provided by law for the cost and any penalty, plus court costs, reasonable attorney's fees and interest from the date that the property was cleaned. In the event that the governing authority does not declare that the cost and any penalty shall be collected as a civil debt, then the assessment above provided for shall be a lien against the property and may be enrolled in the office of the circuit clerk of the county as other judgments are enrolled, and the tax collector of the municipality shall, upon order of the board of governing authorities, proceed to sell the land to satisfy the lien as now provided by law for the sale of lands for delinquent municipal taxes as provided by *Section 21-19-11 Mississippi Code, Annotated*.

All decisions rendered under the provisions of this section may be appealed in the same manner as other appeals from municipal boards or courts are taken.

Done by order of the Mayor and Board of Aldermen of the City of Long Beach, Mississippi, this the 3rd day of September, 2019.



Kini' Gonsoulin
Deputy City Clerk

- The Clerk further reported that the Notice of Hearing was posted on the subject property, 523 LaPlace Drive, Long Beach, Mississippi, on September 4, 2019, by Zoning Enforcement Officer Dale Stogner; the bulletin boards at City Hall, the Water Department, and the Building Office, 201 Jeff Davis Avenue, Long Beach, Mississippi; and the Long Beach Public Library, 209 Jeff Davis Avenue, Long Beach, Mississippi.
- The Clerk submitted a photograph of 523 LaPlace Drive, Long Beach, Mississippi taken by Zoning Enforcement Officer Dale Stogner on October 1, 2019, depicting subject property in its present condition; said photograph is as follows:

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Mayor and Board of Aldermen

523 LaPlace

10/1/19



AFFIDAVIT

STATE OF MISSISSIPPI
COUNTY OF HARRISON
CITY OF LONG BEACH

BEFORE ME, the under signed legal authority authorized to administer oaths in and for the jurisdiction aforesaid, on this day personally appeared DALE STOGNER, known to me to be the Zoning Enforcement Officer of the City of Long Beach, Mississippi, who being by me first duly sworn, deposes and says on oath as follows, to-wit:

1. That he is serving in the capacity of Zoning Enforcement Officer of the City of Long Beach, Mississippi;
2. That in such capacity, he is responsible for the posting of notices of public hearings for the purpose of determining whether or not certain properties are in such a state of uncleanness as to constitute a menace to the public health and safety of the community; he is responsible for the taking of photographs of those certain properties to determine the state of the properties in their then condition on the date of such public hearings; and other matters pertaining to such public hearings and the business of the zoning/code enforcement in and for the City of Long Beach;
3. That on September 4, 2019, he did cause to be posted, Notice of Hearing, a copy of which is attached hereto, on property located at 523 LaPlace Drive (Tax Map Parcel 0612A-03-061.002). Long Beach, Mississippi, assessed to Norrene O'Malley, and at the City Hall, 201 Jeff Davis Avenue, Long Beach, Mississippi; and that on October 1, 2019, the Zoning Enforcement Officer, Dale Stogner, did take and cause to be processed photographs depicting said property in its then condition, to be submitted as exhibits at the public hearing scheduled for October 1, 2019.

This the 1st day of October 2019.

Kini Gonsoulin
KINI GONSOULIN, AFFIANT

SWORN TO AND SUBSCRIBED before me on this the 1st day of October 2019.

-My Commission Expires-

Stacey Dahl
NOTARY PUBLIC



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Mayor and Board of Aldermen**

After discussion, Alderman Frazer made motion seconded by Alderman McCaffrey and unanimously carried to close the public hearing and take official action as follows:

Alderman Frazer made motion seconded by Alderman Griffin and unanimously carried to declare the property in compliance.

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 first Tuesday in October, 2019, 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: Mayor George L. Bass, Aldermen Donald Frazer, Ronald Robertson, Bernie Parker, Kelly Griffin, Timothy McCaffrey, Jr., Mark E. Lishen, Patricia Bennett, Deputy City Clerk Kini Gonsoulin, and City Attorney James C. Simpson, Jr.

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

The Mayor proclaimed the month of October 2019 as Domestic Violence Awareness Month.

Alderman McCaffrey made motion seconded by Alderman Frazer and unanimously carried to approve the Regular and Executive Session minutes of the Mayor and Board of Aldermen meeting dated September 17, 2019, as submitted.

Alderman Lishen made motion seconded by Alderman Parker to approve the minutes of the Planning & Development Commission meeting dated September 26, 2019, to be able to discuss the following items:

- Under Public Hearings, Item #1, Variance – 167 South Ocean Wave, Submitted by Barlow Builders, Inc.
- Under New Business, Item #3, Certificate of Resubdivision – 0 Fred Allen Road, Submitted by David C. Cranford

After lengthy discussion, Alderman Bennett made a substitute motion seconded by Alderman Parker and unanimously carried to table item #3, Certificate of

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Resubdivision - Fred Allen Road, Submitted by David C. Cranford. Ms. Casey Pennington, who was the representative speaking for this property, was directed to provide additional information to the Building Official on her intentions of installing extended roadways for emergency vehicles.

It came on for discussion Item #1 under Public Hearings, Variance – 167 South Ocean Wave, submitted by Barlow Builders, Inc. After considerable discussion, Alderman Lishen made motion to approve the Variance as requested, and to assess the in lieu of payment at the City Engineer’s recommendation of \$1,265 minus the 12 feet of driveway that was included in the calculation inadvertently.

Alderman Frazer made a substitute motion seconded by Alderman Robertson and unanimously carried to approve the remainder of the Planning & Development Commission’s minutes minus the two items previously discussed.

Alderman Frazer made motion to grant the variance as requested, with no in lieu of payment required. After further discussion, Alderman Frazer withdrew his motion and offered a motion to table the variance request until the next meeting. Alderman Bennett seconded the motion and it carried unanimously.

Alderman Lishen made motion seconded by Alderman Parker and unanimously carried to approve the minutes of the Port Commission meeting dated September 19, 2019, as submitted.

Alderman Frazer made motion seconded by Alderman McCaffrey and unanimously carried to approve payment of invoices listed in Docket of Claims number 100119.

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Mayor and Board of Aldermen**

AN ORDINANCE OF THE CITY OF LONG BEACH, MISSISSIPPI GRANTING A NON-EXCLUSIVE FRANCHISE TO SOUTHERN LIGHT, LLC. TO LAY, CONSTRUCT, MAINTAIN, REPLACE, REPAIR, AND OPERATE FIBER OPTIC CABLE AND APPURTENANT TELECOMMUNICATIONS FACILITIES IN, UNDER, OVER, AND ACROSS AND ALONG ALL STREETS, AVENUES, ALLEYS HIGHWAYS, ROADS, BRIDGES, VIADUCTS AND PUBLIC PLACES IN THE CITY OF LONG BEACH, MISSISSIPPI

WHEREAS, **SOUTHERN LIGHT, LLC**, is an Alabama limited liability company which is licensed to do business in Mississippi, organized, among other things for the purpose of constructing telephone lines and furnishing intrastate telecommunications services in the State of Mississippi, which has obtained a certificate of public convenience and necessity to provide such telecommunications services in Mississippi from the Mississippi Public Service Commission; and

WHEREAS, **SOUTHERN LIGHT, LLC** is in the process of constructing certain telecommunications facilities as authorized by the Mississippi Public Service Commission, a portion of which such facilities will be located within the city limits of Long Beach, Mississippi; and

WHEREAS, Section 77-9-711 of the Mississippi Code of 1972, as amended, grants companies such as **SOUTHERN LIGHT, LLC** the authority to construct telecommunications facilities along and across public highways and streets, but not in a manner so as to be dangerous to persons or property or to unreasonably interfere with the common use of such highways and streets; and

WHEREAS, Section 77-9-713 of the Mississippi Code of 1972, as amended, authorizes the City of Long Beach, Mississippi the authority to regulate the manner in which such facilities shall be constructed and maintained along and within the rights-of-way of the municipality's streets; and

WHEREAS, the City of Long Beach, Mississippi does hereby find and adjudicate that the incorporated proposal of **SOUTHERN LIGHT, LLC** for the operation of a telecommunications facility in Long Beach, Mississippi is in the best interest of the citizens of the City of Long Beach, Mississippi and that the following franchise agreement is reasonable and in the best interests of the City of LONG BEACH, Mississippi. The City of Long Beach, Mississippi is authorized under the provisions of Sections 21-27-1, 21-13-3, and 77-9-713 of the Mississippi Code of 1972, as amended, to grant the franchise and the ordinance should be adopted.

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

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

TELECOMMUNICATIONS FRANCHISE AGREEMENT
BETWEEN THE CITY OF LONG BEACH, MISSISSIPPI AND
SOUTHERN LIGHT, LLC ~~October~~, 2019

The City of Long Beach, Mississippi, a Mississippi municipal corporation ("City"), and SOUTHERN LIGHT, LLC, a Mississippi corporation ("the Company"), enter into this Telecommunications Franchise Agreement ("Agreement") as of 10/1, 2019 (the "Agreement Date"). City and Company are sometimes collectively referred to herein as the "Parties" and individually as a "Party."

UNDERSTANDING

A. The Company has applied for a franchise from the City for the purposes of laying, constructing, maintaining, replacing, repairing, and operating a Telecommunications System (as defined herein) which may be used to provide Telecommunications Services (as defined herein), Video Services (as defined herein), and/or Other Services (as defined herein) to customers located in the City as determined by the Company.

B. The Company has provided the Mayor and Board of Aldermen with a franchise proposal, which the City, its representatives and Company have discussed and adjusted in accordance with the needs and interests of the City and its citizens, taking into account the costs.

C. The Board of Aldermen, after evaluating the Company's proposal in the form of this Agreement, and after hearing the comments of interested parties, has determined that the Company has the financial, legal and technical ability to fulfill the obligations under this Agreement. The City has further determined that it will serve the public interest to grant the Company a franchise on the terms and conditions of this Agreement.

Based on the above understanding, the Parties enter into this Agreement.

AGREEMENT

This agreement is entered into on this the 1st day of ~~October~~, 20 19, by and between the CITY of LONG BEACH, MISSISSIPPI, (hereinafter referred to as the "City"), and SOUTHERN LIGHT, LLC, (hereinafter referred to as the "Company").

WITNESSETH:

FOR AND IN CONSIDERATION OF the mutual covenants and promises contained herein, the City and the Company do hereby mutually covenant and agree as follows:

Section 1. Defined Terms. For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

1.1 "City" means the City of Long Beach, Mississippi.

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1.2 "Governing Body" or "Board of Aldermen" means the Board of Aldermen of the City of Long Beach, Mississippi.

1.3 "Person" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.

1.4 "Rights-of-way" means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights of way, including, public utility easements, dedicated utility strips or rights of way dedicated for compatible uses held by the City or located within the City.

1.5 "System" shall mean a system of conduit, pipes, cables, transmission lines, meters, equipment and all other facilities associated with the operation of a fiber-optic transmission line by the Company in accordance with the terms and conditions contained in this Agreement.

Section 2. Grant of Authority. The City hereby grants to the Company the non- exclusive and limited authority to construct, install and maintain a fiber-optic transmission line in and along the rights-of-way in the City of Long Beach, Mississippi, which may include a Small Cell System and/or DAS serving one or more wireless service providers (hereinafter referred to as the "System") for use by individual end-user customers of the Company or for use by another public utility authorized by the Public Service Commission of the State of Mississippi to operate as a public utility in the City of Long Beach. The purpose of the installation of the System is to operate fiber-optic transmission lines within the corporate limits of the City, which may include a Small Cell System and/or DAS. The DAS System may include individual nodes, each of which shall be identified by number and each of which shall consist of space on a decorative street sign, pole, street sign, or other pole approved by the City, mounted thereon, together with all necessary equipment.

Section 3. Compensation.

3.1 The Company shall pay the City all permitting fees required by the City, which are fees intended to offset the administrative cost of processing to completion the work proposed to be performed by the Company in the City.

A. In addition, the Company shall pay to the City as a franchise fee five percent (5%) of its Gross Revenues during each calendar year of operation under this franchise. Such payments shall be made quarterly during each calendar year, within fifteen (15) days of the close of each quarter. An annual financial statement shall be furnished to the City by

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Mayor and Board of Aldermen

the Company on or before April 1st of each year, or at any time upon request of the City after thirty (30) days written notice, such report to show Gross Revenues received by the Company from its operations within the City for the previous year. HOWEVER, at any time, upon request by the City and after sixty (60) days written notice, an annual certified audit report shall be furnished to the City by the Company, showing Gross Revenues received by the Company from its operations within the City for the previous year. In addition, at any time, upon request by the City and upon reasonable notice to the Company, the Company shall provide a report certified by the Company as being true and accurate showing year-to-date (from the last audited report provided to the date of receipt of the notice) Gross Revenues received by the Company from its operations within the City; in addition, the City shall have the right to inspect, examine, or audit during normal business hours and upon reasonable notice to the Company under the circumstances, all documents and records that pertain to the Company's direct obligations under this Agreement.

B. Acceptance of any fee payment shall not be deemed a waiver or release of any claims the City may have for additional sums, nor construed as an accord or agreement that the amount paid is correct.

Section 4. Duration and Term. The franchise granted hereunder shall be for an initial term of ten (10) years (the "Initial Term") commencing on the effective date of the Ordinance approving or ratifying this Agreement, unless otherwise lawfully renewed, revoked or terminated as herein provided. Upon the expiration of the Initial Term, the Company or the City shall have the option to renew this Agreement for one additional term often (10) years, subject to the terms and conditions contained herein, by giving written notice, sixty (60) days before the expiration of the Initial Term, to the other party of that party's intent to renew this Agreement for the additional term.

Section 5. Grant of Non-Exclusive Authority. The right to use and occupy the rights-of-way for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant the use of said rights-of-way to any person at any time and for any lawful purpose. This Agreement shall not be construed to create any rights beyond the terms, conditions, and periods set forth in this Agreement, except as provided herein. The City does not warrant any of the rights granted by this Agreement. The Company acknowledges that the primary municipal purpose of the public roads subject to the Agreement is for the City to provide safe means of transportation for public vehicular and pedestrian traffic and to accommodate the City's own public utility lines.

Section 6. Reservation of Regulatory and Police Powers. The City, by the granting of this franchise and approving this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights which are now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Mississippi, to regulate the

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use of its rights-of-way by the Company or any person or to charge reasonable compensation for such use, and the Company, by its acceptance of this franchise and Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. The Company is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers.

Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

Section 7. Standards of Service.

7.1. Conditions of Street Occupancy. All portions of the System and all associated equipment installed or erected by the Company pursuant to this Agreement shall be located so as to cause minimum interference with the proper use of the rights-of-way and with the rights and reasonable convenience of property owners who own property that adjoins any of such rights-of-way, and only according to plans and specification approved by the City prior to construction pursuant to Section 10 of this Agreement.

7.2 Restoration of Rights-of-way and City utilities. If during the course of the Company's construction, operation or maintenance of the System there occurs a disturbance of any rights-of-way by the Company or the City's water or sewer lines, it shall, at its expense, replace and restore such rights-of-way and water or sewer lines to a condition comparable to the condition of the rights-of-way existing immediately prior to such disturbance to the satisfaction of the City. The work to be done under this Agreement, and the restoration of rights-of-way as required herein, must be completed within the dates specified in any permits authorizing the work. The Company shall perform the work according to the standards and with the materials specified or approved by the City Engineer. The City may, in its sole and absolute discretion, perform any repair work to its water and sewer system caused by the Company, and the Company agrees to pay the reasonable amount invoiced it by the City for that work.

7.3 Relocation at Request of the City. Upon its receipt of reasonable notice, not to be less than forty-five (45) days, except where emergency conditions require shorter notice, the Company shall, at its own expense, protect, support, temporarily disconnect, relocate in the rights-of-way, or remove from the rights-of-way, any property of the Company when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical or telecommunications lines, when such installation or construction is being done

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directly by or for the City. Should the Company refuse or fail to remove its equipment or plant as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be chargeable to the Company.

7.4 Trimming of Trees and Shrubbery. The Company may only perform trimming, cutting, or removal of trees or shrubbery in the City's right of way after obtaining a permit from the City Arborist to do so after giving that official ten (10) days written notice of its request to perform such work. Any work so performed shall be limited to the work specified in the Company's permit application. The Company shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Company to the satisfaction of the City.

7.5. Safety and Permit Requirements. Construction, installation, repair and maintenance of the System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable federal, state, and local laws, rules and regulations, including all permit requirements and ordinances adopted by the City which are now in effect or are hereafter adopted. The System or parts thereof shall not unreasonably endanger or interfere with the safety of persons or property in the area. The Company agrees to abide by the terms and conditions of Mississippi's One Call statute (Miss. Code Annotated Sections 77-13-1 through 77-13-21, as now in force or as hereinafter amended).

7.6. Minimum Standards. All of the construction by the Company shall conform, at a minimum, to the minimum standards of the Codes of the City in force and effect at the time of such construction. In the event there is a conflict between the standards adopted by the Company and any applicable federal, state or local standards, including ordinances adopted by the City, the stricter standard shall apply.

7.7. Obstructions of Rights-of-Way. Except in the case of an emergency, or with the approval of the City Engineer, no rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work. Approval of the City Engineer shall be obtained prior to any work causing any such obstructions or excavations, except in the event of an emergency; and in the event of an emergency the City Engineer must be notified immediately of the work being performed. The Company shall not so obstruct the rights-of-way so as to interfere with the natural, free and clear passage of water through the gutters, drains, ditches or other waterways. Upon making an opening in any public way,

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street, sidewalk, or road, as authorized by this Agreement for the purpose of laying, constructing, repairing, and/or maintaining its System, the Company shall, without unnecessary delay, replace and restore same to its former condition as nearly as possible and in full compliance with the provision of the City' street cut policy and other provision for the Code of Ordinances of the City of Long Beach and the laws of the State of Mississippi. The Company shall re-sod disturbed grassed areas and replace all excavated areas to their former condition in order to minimize the disruption, and to prevent erosion, of public property and the property of adjoining private land owners.

The Company shall provide safe passageway for pedestrians and vehicles through, in and around the work site areas. Work shall be performed at such reasonable times as determined by the City so as not to impede regular business traffic nor to unreasonably affect adjoining property owners. The Company shall meet all City and State requirements for traffic control and notify the City at least forty-eight (48) hours, exclusive of Saturdays, Sundays, and municipal holidays, prior to the commencement of work or accessing of the City conduit, except in cases of emergency, whereby notice shall be provided to the City as soon as reasonably possible.

7.8. Safety Requirements.

A. The Company shall at all times employ the highest degree of care as is commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. The Company shall install and maintain the System in accordance with the requirements of all applicable federal, state, and municipal regulations, including but not limited to those of the FCC and the Corps of Engineers, as now in effect or hereinafter amended, and in such manner that its operations will not interfere with any installations of the City or of a public utility serving the City.

C. All structures and all lines, equipment and connections in, over, under and upon the rights-of-way, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

D. The Company shall maintain a force of employees at all times sufficient to provide safe, adequate and prompt service for the System.

7.9. Least Disruptive Technology. The Company is encouraged to perform construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the rights-of-ways. The Company will be required to use trenchless technology for any portion of

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construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved by the Board of Aldermen. The City Engineer may require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Company may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any roadway to which this Agreement applies.

7.10. Vacation of Right of Way by City. If at any time during any term of this Agreement, the City shall lawfully elect to vacate, relocate, abandon, alter, reconstruct, or change the grade of any street, sidewalk, alley, or other public way, to include drainage and utility areas, the Company, upon reasonable notice by the City, shall remove, re-lay and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense. Should the Company refuse or fail to remove its equipment or plant as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work, or cause it to be done, and the full cost thereof shall be chargeable to the Company, or, in the alternative, to consider such failure by the Company to remove its equipment or plant as an abandonment of all ownership rights in said property. The Company shall furnish assistance, if reasonably requested by the City, to locate or to protect franchise wires, cables, and other facilities, as deemed necessary by the City in the maintenance and service of its streets, alleys, and public ways in an effort to provide services to the public.

7.11 Inspection costs. The cost to the City of necessary inspection of work performed by the Company shall be paid for solely by the Company within sixty (60) days of presentation of a bill for such.

Section 8. Enforcement and Termination of Agreement.

8.1. Notice of Violation. In the event the Company has not complied with the terms of this Agreement, the City shall notify the Company in writing of the nature of the alleged noncompliance.

8.2. Right to Cure or Respond. The Company shall have 30 days from receipt of the notice described in Section 8.1: (a) to respond to the City by contesting the assertion of noncompliance; (b) to cure such default; or (c) in the event that, by the nature of default, such default cannot, for reasons beyond the control of the Company, be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

8.3. Enforcement. In the event the City determines that the Company is in default of any provision of this Agreement, in addition to any right or remedy the City may have at law or in equity, the City may pursue any or all of the following remedies:

- A. Seek specific performance of any provision which reasonably lends itself to such a remedy;

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- B. Make a claim against any surety or performance bond which may be required to be posted;
- C. Restrain by injunction the default or reasonably anticipated default by the Company of any provision of this Agreement;
- D. Seek any other available remedy permitted by law or in equity;

8.4. Impossibility of Performance. The Company shall not be held in default or noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

8.5 Removal of System after Termination. At the expiration of the term for which this Agreement is granted plus any extension thereof, or upon its termination or cancellation for any other reason, the City shall have the right to require the Company to remove, at its own expense, all portions of its System from the City of Long Beach.

Section 9. Default. In addition to any other act or omission determined by the City to be a material breach, each of the following shall constitute a material default by the Company for which the City reserves the right, in addition to all other rights and remedies it may have at law or in equity, to terminate and cancel this Agreement and all rights and privileges of the Company hereunder:

- (1) Failure to make any payments to the City required to be made as set forth in this Agreement;
- (2) Failure to maintain a liability insurance policy that is not cured within thirty (30) days following written notice to the Company;
- (3) failure to provide or furnish any information required under this Agreement to the City that is not cured within ten (10) days following written notice to the Company;
- (4) Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations that present a threat to health or safety that has not been cured within thirty (30) days written notice;
- (5) The occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the System or the assets of the Company;
- (6) The condemnation by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or

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- (7) If (a) the Company shall make an assignment without prior written approval of the City, or make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System;
- (b) a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (c) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or for any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company.

Section 10. Approval of Construction Plans. All plans and specifications for construction, excavation, or installation of any portion of the System shall be submitted for approval to the Director of Public Works or his designee and the City Engineer. Those plans and specifications shall include true and correct maps or plats of all proposed installations and the types of equipment and facilities, property identified and described by appropriate symbols and marks and which shall include annotations of all public ways, streets, road, and conduits where the work is to be undertaken. Maps shall be drawn in a scale which shall allow proper review and interpretation and will be filed no less than ten (10) working days before any installation of said cable, equipment, of facilities. The Company shall only perform work pursuant to permits, including but not limited to "street-cut permits", from the City as required by this Agreement and all applicable city, state, and federal rules and regulations, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the City. Repair and replacement of the rights-of-ways due to the Company's installation, removal, relocation, maintenance and repair of its System or facilities shall be accomplished to the satisfaction of the City. Within sixty (60) days of the completion of each segment of the Company's System, the Company shall supply the City with a complete set of "as built" drawings for that segment. Further, after each replacement, relocation, reconstruction, or removal, the Company shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings showing each modification to the Director of Public Works within sixty (60) days thereof.

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Section 11. Insurance; Bonds.

11.1. General Liability Insurance. Company shall maintain in full force and effect, at its own cost and expense, a comprehensive general liability insurance policy in the amount of \$1,000,000.00 for bodily injury and property damage per person and \$3,000,000.00 as to each occurrence, satisfactory to the City with one or more responsible insurance companies duly authorized to do business in the State of Mississippi. The City shall be named as an additional insured on the policy, and the Company shall provide the City with a certificate of insurance designating the City as an additional insured on each policy and extension or renewal thereof. An endorsement shall be included with the policy that states that the policy shall not be cancelled without giving thirty (30) days written notice of such cancellation to the City. In addition, the Company shall require its contractors and subcontractors to keep and maintain in connection with all construction, installation, and maintenance work to be performed within the City of Long Beach 's city limits general liability insurance coverage with one or more responsible insurance companies duly authorized to transact business in the State of Mississippi with insurance limits of not less than \$500,000.

11.2. Worker's Compensation Insurance. In addition, the Company shall obtain worker's compensation coverage as required by the laws of the State of Mississippi with one or more responsible insurance companies duly authorized to do business in the State of Mississippi.

11.3. Comprehensive Automobile Liability Insurance. Company shall maintain in full force and effect, at its own cost and expense, a comprehensive automobile liability insurance policy in the amount of \$1,000,000.00 for bodily injury and property damage per person and \$3,000,000.00 as to each occurrence, satisfactory to the City with one or more responsible insurance companies duly authorized to do business in the State of Mississippi.

11.4. Intended Beneficiary. Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect the City, and the City shall be primarily covered for all losses covered by the policies. Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessment, being that all are negotiated at the sole risk of the Company.

11.5. Construction and Reclamation Bond. The entity which installs the Company's cable and related equipment into the public ways of the City shall obtain and maintain, at its sole cost and expense, throughout the construction or installation period, and shall file with the City Clerk, a Construction and Reclamation Bond with a bonding company authorized to business in the State of Mississippi, and found acceptable by the City, in the amount of One Hundred Thousand Dollars (\$100,000.00) in order to safeguard the City from damage done as a result of the installation of any portion or aspect of the Company's System.

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The Company shall provide certification of this Construction and Reclamation Bond to the City at least ten (10) days prior to the commencement of the installation of any portion or aspect of the System into the public ways of the City. The bond shall not expire until the construction and installation of the cable and related equipment is completed. The Construction and Reclamation Bond shall provide, but not be limited to, the following condition:

there shall be recoverable by the City of Long Beach, jointly and severally from the principal and the surety, any and all damages, losses or costs suffered by the City of Long Beach resulting from the construction or installation of cable and related equipment in the City of Long Beach, Mississippi.

The rights reserved to the City with respect to the Construction and Reclamation Bond are in addition to all other rights of the City, whether reserved by this Agreement or authorized by law, no action, proceeding, or exercise of a right with respect to such Construction and Reclamation Bond shall affect any other right the City may have.

11.6. Performance Bond. Within one (1) month of the effective date of this Agreement, the Company shall obtain and maintain, at its sole cost and expense, and file with the City Clerk, a Performance Bond with a bonding company authorized to do business in the State of Mississippi and found acceptable by the City, the approval of which shall not be unreasonably withheld, in the amount of Fifty Thousand Dollars (\$50,000.00), in order to secure the Company's performance of its obligations and faithful adherence to all requirements of this Agreement. The Performance Bond shall provide, but not be limited to, the following condition:

there shall be recoverable by the City of Long Beach, jointly and severally from the principal and the surety, any and all damages, losses or costs suffered by the City of Long Beach resulting from the failure of the Company to: (a) keep the System in good repair; or (b) remove its cables or related equipment from the public ways of the City of Long Beach, upon the City's request for their removal, either at the time of the expiration of the franchise, upon the Company's abandonment of said cable and related equipment, or for any other reason contemplated by this Agreement.

The Performance Bond shall also contain the following endorsement:

It is hereby understood and agreed that this instrument may not be cancelled nor any intention not to renew by exercised until sixty (60) days after receipt by the City of Long Beach by registered mail of written notice of said intent.

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Section 12. Indemnity and Hold Harmless. The Company agrees to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and representatives, against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the City or for which the City may be liable, which arise from the negligent or willful acts or omissions of the Company, its employees, agents, or subcontractors arising out of the construction, operation, maintenance, upgrade, repair, or removal of Facilities, or any other activity related to the Companies performance of its rights and obligations under this Agreement, except for those claims, costs, losses, expenses, demands, actions, or causes of action which arise solely from the negligence, willful misconduct, or other fault of the City. The City does not and shall not waive any rights against the Company which it may have by reason of this indemnification, or because of the acceptance by, or the Company's deposit with, the City of any of the insurance policies described in this Agreement. The indemnification by the Company shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

Section 13. Disclaimer of Warranties. The City makes no representation or warranty regarding its rights to authorize the installation or operation of the System on any particular right- of-way, and the burden and responsibility for making such determination in advance of the installation shall be upon the Company. This Agreement shall not be construed to deprive the City of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its streets.

Section 14. Warranties and Representations. The Company hereby agrees, represents and warrants that it is legally authorized to enter into this Agreement in accordance with all applicable laws, rules and regulations. Furthermore, the Company further agrees, represents and warrants that this Agreement is legal, valid and binding, and that it is required to obtain authorization and consent from the City prior to the construction, installation, operation or maintenance of the System.

Section 15. Other Obligations. Obtaining a franchise pursuant to this Agreement does not relieve the Company of its duty to obtain all other necessary permits, licenses, authority and the payment of fees required by any other City, county, state or federal rules, laws or regulations, and the Company is responsible for all work done in the rights-of-way pursuant to this Agreement, regardless of who performs the work.

Section 16. Payment of Costs. The Company shall be responsible for all costs associated with the installation, repair and maintenance of the System and all associated equipment including, but not limited to (1) the costs to repair the rights-

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of-way due to the installation, repair and maintenance of the System, and (2) the costs incurred in removing or relocating any portion of the System or facilities constructed when required by the City.

Section 17. Priority of Use. This Agreement does not establish any priority for the use of the rights-of-way by the Company or any present or future franchisees or permit holders. In the event of any dispute as to the priority of use of the rights-of-way, the first priority shall be to the public generally, the second priority to the City, the third priority to the State of Mississippi and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Mississippi.

Section 18. Notice. The Company shall provide the City with notices of all petitions, applications, communications and/or reports relating to matters affecting the Company's use of the City's public ways. Upon written request from the City, the Company shall provide the City with copies of all such documentation. Every notice or response required by this Agreement to be served upon the City or the Company shall be in writing and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid as follows:

The notices or responses to the City shall be addressed as follows:

City of Long Beach, Mississippi
Attention: Mayor and Chief
Administrative Officer
201 Jeff Davis Avenue
Long Beach, MS 39560

WITH A COPY TO:

James C. Simpson, Jr., Esq.
Wise Carter Child & Caraway
2510 – 14th Street, Suite 1125
Gulfport, MS 39501

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The notices or responses to the Company shall be addressed as follows:

Uniti Fiber
Attention: Kelly A. McGriff
Vice President and Deputy General Counsel
107 St. Francis Street, Suite 1800
Mobile, AL 36602

The City and The Company may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

Section 19. Application. The terms and conditions contained in this Agreement shall apply to all areas within the corporate limits of the City and those areas annexed by the City after the passage and approval of this Agreement.

Section 20. Acceptance. The Company's acceptance of this Agreement shall be in writing in a form approved by the City's Chief Administrative Officer and shall be accompanied by delivery of all payments, insurance certificates, applications, acceptance fees and performance of other requirements relating to commencement of construction as set forth in this Agreement.

Section 21. Assignment. The Company's interest in this Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the Board of Aldermen. The City reserves the right to be reimbursed by the Company for costs incurred by it in reviewing the request for transfer of ownership.

Section 22. Miscellaneous.

22.1. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement or be used in interpreting the meanings and provisions of this Agreement.

22.2. The Company is requested by the City to employ, contract with vendors, sub- contractors, or joint venture projects with citizens and businesses in the City of Long Beach, Mississippi.

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22.3. The Company shall comply with all applicable laws, regulations, policies, and procedures of the United States, the State of Mississippi, and the City of Long Beach that may apply to this Agreement. The Company shall not discriminate against any employee, contractor, or subcontractor, nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, nation origin, or disability.

Section 23. Rules of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

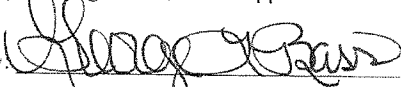
Section 24. Governing Law. This Agreement shall be deemed to have been made in the State of Mississippi, and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Mississippi, without giving effect to any choice of law provisions arising thereunder. Venue and jurisdiction for any dispute between the parties to this Agreement shall be in the appropriate state court located in the Second Judicial District of Harrison County, Mississippi.

Section 25. Severability Clause. If any part, section or subdivision of this Agreement shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Agreement, which shall continue in full force and effect notwithstanding such holding.

Section 26. Effective upon Full Execution. This Ordinance shall become effective only upon receipt of a written unconditional acceptance by the Company of the terms and conditions contained herein within thirty (30) days of the passage of the action of the Long Beach Board of Aldermen approving and authorizing this Agreement.

ADOPTED AND APPROVED this 8 day of Oct, 2019.

City of Long Beach, Mississippi

By 
George Bass, Mayor

ATTEST:


Stacey Dahl, City Clerk

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STATE OF MISSISSIPPI
COUNTY OF Jackson

I, Kini Gonsoulin, a Notary Public, in and for the County in said State, hereby certify that Mayor George Bass, and Stacey Dahl whose names as Mayor and City Clerk of the City of Long Beach, Mississippi, a municipal corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and seal this 8th day of October, 2019.

Kini Gonsoulin
Notary Public

My commission expires: 8/27/21



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Southern Light, LLC

By: Kelly A. McGriff
Its: VP & Deputy General Counsel

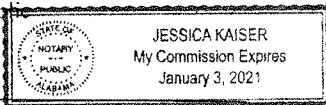
STATE OF ALABAMA

COUNTY OF MOBILE

I, Jessica Kaiser, a Notary Public, in and for said County in said State, hereby certify that Kelly A. McGriff whose name as VP & Deputy General Counsel of Southern Light, LLC an Alabama Limited Liability Company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, as such officers and with full authority, executed the same voluntarily for and as the act of said Alabama Company.

Given under my hand and seal this 4th day of October, 20 19.

Jessica Kaiser
Notary Public



My commission expires:

*

*

Franchise Agreement – C Spire was tabled until the October 15, 2019 meeting.

Contract – GSE Consulting was tabled until the October 15, 2019 meeting.

The Planning & Development Commission Appointment for Ward 2 was tabled until the October 15, 2019 meeting.

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Alderman Griffin made motion seconded by Alderman McCaffrey and unanimously carried to authorize the following advertisement for School Board Appointment Resume's:

LEGAL NOTICE
ELECTION OF SCHOOL TRUSTEE
THE CITY OF LONG BEACH, MISSISSIPPI

NOTICE IS HEREBY GIVEN, that the Mayor and Board of Aldermen of the City of Long Beach, Mississippi, at its first meeting in February to be held on Tuesday, the 4th day of February, 2020, at 5:00 p.m. at the Long Beach City Hall, 201 Jeff Davis Avenue, in said City, or at such meeting to which the same may be recessed or adjourned, will consider and act upon the election of appointment of a Trustee to the Board of Trustees of the Long Beach School District, required by Law to be elected by said Mayor and Board of Aldermen.

Any person desiring to be considered an applicant for such office of trustee, or any person or civic organization desiring to submit the name of any person as an applicant, may so do by filing a curriculum vitae or resume with the City Clerk (cityclerk@cityoflongbeachms.com) of said City at the City Hall, 201 Jeff Davis Avenue, Long Beach Mississippi, or by mail to Post Office Box 929, Long Beach, Mississippi, 39560, no later than thirty (30) days from the date of this notice, 5:00 o'clock p.m. on Friday, the 31st day of October, 2019. *The resume shall include, but is not limited to, the name, birthday and address of the applicant, his or her work history and qualifications, and the name, address, birthday, and present employment of the applicant's spouse,* and any supplemental information as may be required by the Mayor and Board of Aldermen.

Ordered this the 1st day of October, 2019, by the Mayor and Board of Aldermen, Long Beach, Mississippi.

-SEAL-

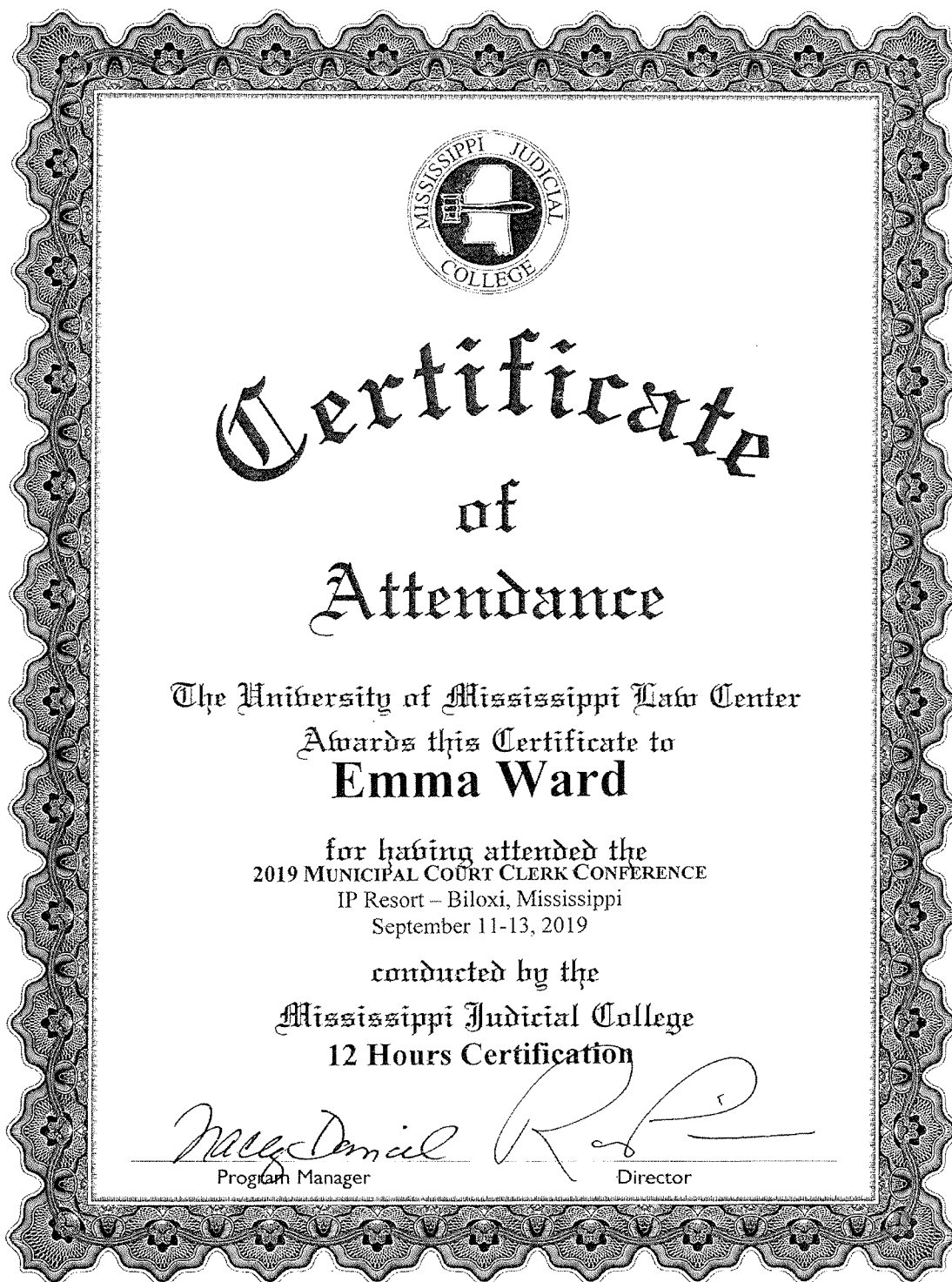


Stacey Dahl, City Clerk



Alderman Frazer made motion seconded by Alderman McCaffrey and unanimously carried to spread the following certificate of Attendance for Municipal Court Clerk Emma Ward:

Minutes of October 1, 2019
Mayor and Board of Aldermen



Alderman Frazer made motion seconded by Alderman Griffin and unanimously carried to approve the following Municipal Compliance Questionnaire and authorize the Mayor and City Clerk to execute same:

Minutes of October 1, 2019 Mayor and Board of Aldermen

MUNICIPAL COMPLIANCE QUESTIONNAIRE

As part of the municipality's audit, the governing authorities of the municipality must make certain assertions with regard to legal compliance. The municipal compliance questionnaire was developed for this purpose.

The following questionnaire and related certification must be completed at the end of the municipality's fiscal year and entered into the official minutes of the governing authorities at their next regular meeting.

The governing authorities should take care to answer these questions accurately. Incorrect answers could reduce the auditor's reliance on the questionnaire responses, resulting in the need to perform additional audit procedures at added cost.

INFORMATION

Note: Due to the size of some municipalities, some of the questions may not be applicable. If so, mark N/A in answer blanks. Answers to other questions may require more than "yes" or "no", and as a result, more information on this questionnaire may be required and/or separate work papers may be needed.

1. Name and address of municipality: City of Long Beach, 201 Jeff Davis Ave., P.O. Box 929, Long Beach, MS, 39560

2. List the date population of the latest official U.S. Census or most recent official census:

2010 – 14,792

3. Names, addresses and telephone numbers of officials (include elected officials, chief administrative officer, and attorney).

Mayor George L. Bass, 20171 Lovers Lane, Long Beach, MS 38560 (228) 234-1832

Alderman Donald Frazer, 1130 East Old Pass Road, Long Beach, MS 39560 (228) 343-2082

Alderman Ronald Robertson, 108 Driftwood Drive, Long Beach, MS 39560 (228) 224-3039

Alderman Bernie Parker, 103 Summer Lane, Long Beach, MS 39560 (228) 868-2116

Alderman Kelly Griffin, 731 North Nicholson Avenue, Long Beach, MS 39560 (228-860-0241

Alderman Timothy McCaffrey, Jr., 611 West Old Pass Road, Long Beach, MS 39560 (228) 861-8237

Alderman Mark E. Lishen, 9 Ashley Court, Long Beach, MS 39560, (228) 575.8583

Alderman Patricia Bennett, 20108 Daugherty Road, Long Beach, MS 39560 (228) 861-4782

Attorney James C. Simpson, Jr., 2510 14th Street, Ste. 1125, Gulfport, MS 39501 (228) 867-7141

4. Period of time covered by this questionnaire:

From: October 1, 2018 To: September 30, 2019

5. Expiration date of current elected officials' term: July, 2021

Minutes of October 1, 2019 Mayor and Board of Aldermen

MUNICIPAL COMPLIANCE QUESTIONNAIRE Year Ended September 30, 2019

Answer All Questions: Y - YES, N - NO, N/A - NOT APPLICABLE

PART I - General

- | | |
|---|-----|
| 1. Have all ordinances been entered into the ordinance book and included in the minutes? (Section 21-13-13) | Y |
| 2. Do all municipal vehicles have public license plates and proper markings? (Sections 25-1-87 and 27-19-27) | Y |
| 3. Are municipal records open to the public? (Section 25-61-5) | Y |
| 4. Are meetings of the board open to the public? (Section 25-41-5) | Y |
| 5. Are notices of special or recess meetings posted? (Section 25-41-13) | Y |
| 5. Are all required personnel covered by appropriate surety bonds? | |
| · Board or council members (Sec. 21-17-5) | Y |
| · Appointed officers and those handling money, see statutes governing the form of government (i.e., Section 21-3-5 for Code Charter) | Y |
| · Municipal clerk (Section 21-15-38) | Y |
| · Deputy clerk (Section 21-15-23) | Y |
| · Chief of police (Section 21-21-1) | Y |
| · Deputy police (Section 45-5-9) (if hired under this law) | N/A |
| 7. Are minutes of board meetings prepared to properly reflect the actions of the board? (Sections 21-15-17 and 21-15-19) | Y |
| 8. Are minutes of board meetings signed by the mayor or majority of the board within 30 days of the meeting? (Section 21-15-33) | Y |
| 9. Has the municipality complied with the nepotism law in its employment practices? (Section 25-1-53) | Y |
| 10. Did all officers, employees of the municipality, or their relatives avoid any personal interest in any contracts with the municipality during their term or within one year after their terms of office or employment? (Section 25-4-105) | Y |
| 11. Does the municipality contract with a Certified Public Accountant or an auditor approved by the State Auditor for its annual audit within twelve months of the end of each fiscal year? (Section 21-35-31) | Y |

IV-B1

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

12. Has the municipality published a synopsis or notice of the annual audit within 30 days of acceptance?
(Section 21-35-31 or 21-17-19)

Y

PART II - Cash and Related Records

1. Where required, is a claims docket maintained?
(Section 21-39-7)
2. Are all claims paid in the order of their entry in the claims docket? (Section 21-39-9)
3. Does the claims docket identify the claimant, claim number, amount and fund from which each warrant will be issued?
(Section 21-39-7)
4. Are all warrants approved by the board, signed by the mayor or majority of the board, attested to by the clerk, and bearing the municipal seal? (Section 21-39-13)
5. Are warrants for approved claims held until sufficient cash is available in the fund from which it is drawn?
(Section 21-39-13)
6. Has the municipality adopted and entered on its minutes a budget in the format prescribed by the Office of the State Auditor? (Sections 21-35-5, 21-35-7 and 21-35-9)
7. Does the municipality operate on a cash basis budget, except for expenditures paid within 30 days of fiscal year end or for construction in progress? (Section 21-35-23)
8. Has the municipality held a public hearing and published its adopted budget? (Sections 21-35-5, 27-39-203, & 27-39-205)
9. Has the municipality complied with legal publication requirements when budgetary changes of 10% or more are made to a department's budget? (Section 21-35-25)
10. If revenues are less than estimated and a deficit is anticipated, did the board revise the budget by its regular July meeting? (Section 21-35-25)

Y

Y

Y

Y

Y

Y

Y

Y

Y

N/A

IV-B2

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

11. Have financial records been maintained in accordance with the chart of accounts prescribed by the State Auditor? (Section 21-35-11) Y
12. Does the municipal clerk submit to the board a monthly report of expenditures against each budget item for the preceding month and fiscal year to date and the unexpended balances of each budget item? (Section 21-35-13) Y
13. Does the board avoid approving claims and the city clerk not issue any warrants which would be in excess of budgeted amounts, except for court-ordered or emergency expenditures? (Section 21-35-17) Y
14. Has the municipality commissioned municipal depositories? (Sections 27-105-353 and 27-105-363) Y
15. Have investments of funds been restricted to those instruments authorized by law? (Section 21-33-323) Y
16. Are donations restricted to those specifically authorized by law? [Section 21-17-5 (Section 66, Miss. Constitution) -- Sections 21-19-45 through 21-19-59, etc.] Y
17. Are fixed assets properly tagged and accounted for? (Section II - Municipal Audit and Accounting Guide) Y
18. Is all travel authorized in advance and reimbursements made in accordance with Section 25-3-41? Y
19. Are all travel advances made in accordance with the State Auditor's regulations? (Section 25-3-41) Y

PART III - Purchasing and Receiving

1. Are bids solicited for purchases, when required by law (written bids and advertising)? [Section 31-7-13(b) and (c)] Y
2. Are all lowest and best bid decisions properly documented? [Section 31-7-13(d)] Y
3. Are all one-source item and emergency purchases documented on the board's minutes? [Section 31-7-13(m) and (k)] Y
4. Do all officers and employees understand and refrain from accepting gifts or kickbacks from suppliers? (Section 31-7-23) Y

IV-B3

Minutes of October 1, 2019 Mayor and Board of Aldermen

PART IV - Bonds and Other Debt

- | | | |
|----|--|------------|
| 1. | Has the municipality complied with the percentage of taxable property limitation on bonds and other debt issued during the year? (Section 21-33-303) | <u>Y</u> |
| 2. | Has the municipality levied and collected taxes, in a sufficient amount for the retirement of general obligation debt principal and interest? (Section 21-33-87) | <u>Y</u> |
| 3. | Have the required trust funds been established for utility revenue bonds? (Section 21-27-65) | <u>N/A</u> |
| 4. | Have expenditures of bond proceeds been strictly limited to the purposes for which the bonds were issued? (Section 21-33-317) | <u>Y</u> |
| 5. | Has the municipality refrained from borrowing, except where it had specific authority? (Section 21-17-5) | <u>Y</u> |

PART V - Taxes and Other Receipts

- | | | |
|----|--|----------|
| 1. | Has the municipality adopted the county ad valorem tax rolls? (Section 27-35-167) | <u>Y</u> |
| 2. | Are interest and penalties being collected on delinquent ad valorem taxes? (Section 21-33-53) | <u>Y</u> |
| 3. | Has the municipality conducted an annual land sale for delinquent ad valorem taxes? (Section 21-33-63) | <u>Y</u> |
| 4. | Have the various ad valorem tax collections been deposited into the appropriate funds? (Separate Funds for Each Tax Levy) (Section 21-33-53) | <u>Y</u> |
| 5. | Has the increase in ad valorem taxes, if any, been limited to amounts allowed by law? (Sections 27-39-320 and 27-39-321) | <u>Y</u> |
| 6. | Are local privilege taxes collected from all businesses located within the municipality, except those exempted? (Section 27-17-5) | <u>Y</u> |
| 7. | Are transient vendor taxes collected from all transient vendors within the municipality, except those exempted? (Section 75-85-1) | <u>Y</u> |
| 8. | Is money received from the state's "Municipal Fire Protection Fund" spent only to improve municipal fire departments? (Section 83-1-37) | <u>Y</u> |

IV-B4

Minutes of October 1, 2019
Mayor and Board of Aldermen

- 9. Has the municipality levied or appropriated not less than 1/4 mill for fire protection and certified to the county it provides its own fire protection or allowed the county to levy such tax? (Sections 83-1-37 and 83-1-39) N/A
- 10. Are state-imposed court assessments collected and settled monthly? (Section 99-19-73, 83-39-31, etc.) Y
- 11. Are all fines and forfeitures collected when due and settled immediately to the municipal treasury? (Section 21-15-21) Y
- 12. Are bids solicited by advertisement or, under special circumstances, three appraisals obtained when real property is sold? (Section 21-17-1) Y
- 13. Has the municipality determined the full and complete cost for solid waste for the previous fiscal year? (Section 17-17-347) Y
- 14. Has the municipality published an itemized report of all revenues, costs and expenses incurred by the municipality during the immediately preceding fiscal year in operating the garbage or rubbish collection or disposal system? (Section 17-17-348) N/A
- 15. Has the municipality conducted an annual inventory of its assets in accordance with guidelines established by the Office of the State Auditor? (MMAAG) Y

IV-B5

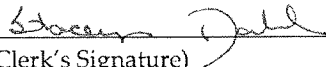
Minutes of October 1, 2019
Mayor and Board of Aldermen

Long Beach, Mississippi

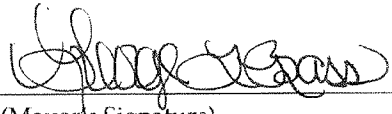
Certification to Municipal Compliance Questionnaire

Year Ended September 30, 2019

We have reviewed all questions and responses as contained in this Municipal Compliance Questionnaire for the Municipality of Long Beach, and, to the best of our knowledge and belief, all responses are accurate.



(City Clerk's Signature)



(Mayor's Signature)

October 1, 2019

(Date)

October 1, 2019

(Date)

Minute Book References:

Book Number _____

Page _____

(Clerk is to enter minute book references when questionnaire is accepted by board.)

Alderman Griffin made motion seconded by Alderman McCaffrey and unanimously carried to grant permission to the Rotary Club of Edgewater MS to sell beer at Cruisin' The Coast.

Alderman Griffin made motion seconded by Alderman McCaffrey and unanimously carried to approve the following Special Event Application submitted by

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

First Baptist Church for Trunk or Treat, and waive all applicable fees:



LARUE STEPHENS, PH.D., PASTOR
BRENDA DAVIS, MINISTER OF EDUCATION
JOHN JONES, STUDENT MINISTER

September 3, 2019

The Honorable George L. Bass
Long Beach City Hall
201 Jeff Davis Avenue
Long Beach, MS 39560

Dear Mayor Bass,

First Baptist Church of Long Beach is respectfully requesting consideration for fees to be waived for the use of Town Green on October 31, 2019, from 5:00 – 7:00 p.m. for the purpose of hosting a community Trunk or Treat event. We are requesting the use of the full facilities at Town Green, from the stage to the shoe-fly. There will be children's games on the grass lawn from the shoe-fly to the library. Additionally, there will be automobiles staged along 3rd Street, Jeff Davis Avenue, and 4th Street. We are securing School District permission for use of the school owned property at Town Green.

Thank you for consideration of our request to serve our community at Town Green. If you have any questions, please contact me at 228-806-3651, or you may contact our offices at 228-864-2584.

Sincerely,

Dr. LaRue Stephens

300 NORTH CLEVELAND AVENUE • P. O. BOX 338 • LONG BEACH, MS 39560
TELEPHONE: 228-864-2584 • FAX: 228-868-2913 • WWW.FBCLB.COM

Minutes of October 1, 2019
Mayor and Board of Aldermen

October 31, 2019
Thursday
Trunk or Treat
2:00pm - 8:00pm
(5:30 - 7:30pm)
Town Green

CITY OF LONG BEACH
PARKS AND RECREATION DEPARTMENT
APPLICATION FOR PERMIT

Bob Paul
228-669-7601

TOWN GREEN

Group / Individual Name (Permit fee):

First Baptist Church

Telephone Number: Home 228-864-2584 Work 228-806-3651 Cell

Street Address: 300 N. Cleveland Ave.

City Long Beach State MS Zip 39560

Type of Event: Trunk or Treat

Start Time: 2:00 pm (5:30 - 7:30)

Closing Time: 8:00 pm

It is agreed between the City of Long Beach and the permit fee that the named facility is reserved on

Sunday - October 31, 2019
(Date)

The person(s) requesting this permit

1. Agrees to personally accept responsibility for any damage done to the facility, grounds or equipment by persons in his/her group during the reserved period of time, and will hold the City of Long Beach harmless of any damage done to permit tee or permit tee's equipment.
2. Agrees to maintain order and control over persons in the group.
3. Agrees to abide by all policies and procedures of the City of Long Beach, the Long Beach Parks and Recreation Department as directed by the contents of the Town Green policy statement.
4. Understands that failure to comply with all the terms of the aforementioned policy as well as any violation of federal, state, or municipal law in conjunction with the use of this facility will result in the cancellation of the privilege of using this facility and will jeopardize any future permit grants for this or any other facility. I hereby agree that I have read and understand the regulations and policies governing the use of the Long Beach Town Green, including the deck area and shoefly.

Signature: [Signature]

Date: Sept 3, 2019

Rental Fee \$ _____ Receipt # _____ Date _____

Deposit Fee \$ _____ Receipt # _____ Date _____

Clean-up Fee \$ _____ Receipt # _____ Date _____

PLEASE REVIEW THE POLICY AND RETAIN FOR YOUR RECORDS

Minutes of October 1, 2019
Mayor and Board of Aldermen

STATE OF MISSISSIPPI
COUNTY OF HARRISON
SECOND JUDICIAL DISTRICT

RELEASE AND IDNEMNITY

WHEREFORE, for and in consideration of the use of the ground of the City of Long Beach, Town Green and structures erected upon it owned by the City of Long Beach, Mississippi, and located at 115 East 3rd Street, 115 East 3rd Street, LAKE FIRST BAPT CHURCH, LAURE STEPHENS, do hereby release, acquit and forever discharge the City of Long Beach, Mississippi, and all of its respective agents, servants, employees, elected and non-elected officials, successors, predecessors, insurers, attorneys, and any and all other legal entities and persons, of and from any and all claims, demands, actions, damages, liability, or legal recourse of any type, and expenses (including attorneys' fees) in connection with or arising from or out of my use of the Town Green.

WHEREFORE, PREMISES CONSIDERED:

The undersigned further agrees that he/she shall indemnify and hold harmless the City against and from all claims, demands, actions, rights of action, liabilities, losses, judgments, costs, expenses, and attorney fees which shall or may rise by virtue of anything done or omitted to be done by us, including through or by its agents, employees, or other representatives, arising out of, claimed on account of, or in any manner predicated upon the use of the above mentioned property. The undersigned further agrees to protect and save and keep the City harmless and indemnify the City against and from any and all claims, demands, actions, liabilities, judgments, losses, costs, damages or expenses (including attorneys' fees) arising out of, claimed on account of, or in any manner predicated upon any accident or other occurrence arising from the use of the above mentioned property causing injury to person(s) (including death) or property to whomsoever or whatever in law and equity.

Furthermore, as part of the consideration for using the abovementioned property, the undersigned agree to assume full responsibility and liability for any and all risk of loss by theft, vandalism, destruction, or otherwise, of any and all items of personal property belonging to the organization, group or members thereof while in and about said facility, regardless of whether or not said loss relates to, or arises out of, the use of said facility and, in addition, said organization or group agrees to indemnify and hold the City of Long Beach, its agents and servants, and employees harmless from and against all claims and expenses for same, including attorneys fees.

This, the 3rd day of September, 2019.

Authorized Signature Dr. Laure Stephens, Pastor & President of Corporation

Witness _____

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

**CITY OF LONG BEACH
SPECIAL EVENT APPLICATION**

City Clerk's Office * 201 Jeff Davis Avenue * P.O. Box 929 * Long Beach, MS 39560

Date Received By Clerk's Office: 10/19 Time: _____ By: CS

Please complete this application in accordance with the City of LONG BEACH Special Events Policy, and return it to the Office of the City Clerk at least 90 calendar days before the first day of the event.

Sponsoring Organization's Legal Name: First Baptist Church of Long Beach
 Organization Address: 300 N. Cleveland Ave.
 Organization Agent: Dr. LaRue Stephens Title: Pastor/President of Corporation
 Phone: 228 864 2584 Work Home _____ During event 228 806 3651
 Agent's Address: 10 Citadel Circle Long Beach MS 39560
 Agent's E-Mail Address: LaRue@fbclb.com
 Event Name: Trunk or Treat

Please give a brief description of the proposed special event: Families of our city will be invited to bring their children to receive candy and gifts from 40 plus trunks and there will be a variety of games & music for all to enjoy. We do this as a gift to the families of our city. No charge for admission.

Event Day(s) & Date(s): Oct. 31, 2019 Event Time(s): 5:30 - 7:30 pm
 Set-Up Date & Time: Oct 31; 2:00pm Tear-Down Date & Time: Oct 31; 8:00pm
 Event Location: Long Beach Town Green

ANNUAL EVENT: Is this event expected to occur next year? YES NO Our city responded well in attendance.
 How many years has this event occurred? 1 year; we gifted our city with this event last year.

ADOPTED: 11.15.11-BOARD ACTION

Minutes of October 1, 2019 Mayor and Board of Aldermen

MAP: (a) If your event will use streets or sidewalks (for a parade, run, etc.) or will use multiple locations, please attach a complete map showing the assembly and dispersal locations and the route plan. (b) Show any streets or parking lots that you are requesting to be blocked off, and location of vendors, if any. A final map, if different, must be provided seven (7) days before the event. (c) Please show an emergency vehicle access lane.

STREET CLOSURES: Start Date/ Time: None through Date/ Time _____

RESERVED PARKING: Are you requesting reserved parking? YES NO

If yes, list the number of street spaces, City lots or locations where parking is requested:

VENDORS: Food Concessions? YES NO Other Vendors? YES NO

DO YOU PLAN TO HAVE ALCOHOL SOLD/SERVED AT THIS EVENT? YES NO

If yes, are liquor license and liquor liability insurance attached? YES NO

If yes, what time? _____ Until _____

ENTERTAINMENT: Are there any entertainment features related to this event? YES NO

If yes, provide an attachment listing all bands/performers, type of entertainment, and performance schedule.

ATTENDANCE: What is the expected (estimated) attendance for this event? 1000-1500?

AMUSEMENT: Do you plan to have any amusement or carnival rides? YES NO

If yes, you are required to obtain a permit through the City Clerk's Office.

REST ROOMS: Are you planning to provide portable rest rooms at the event? YES NO

If yes, how many? _____

As an event organizer, you must consider the availability of rest room facilities during this event. Consideration should be made regarding the type of event, the length of time it will be held, the number of people, etc. You must determine the rest room facilities in the immediate area of the event venue and then identify the potential need for portable facilities. Remember to identify accessible facilities for ADA requirements as well.

OTHER REQUESTS: (i.e., Police Department assistance, Fire Dept., street closures, electrical, etc.)

Sound system, if available, for announcements and directions for door prize drawings.

ADOPTED: 11.15.11-BOARD ACTION

Minutes of October 1, 2019
Mayor and Board of Aldermen

INSURANCE: All sponsors of special events must carry liability insurance with coverage of at least \$500,000. An event sponsor must provide a valid certificate of insurance naming the City of Long Beach as an additional insured party on the policy. A sponsor of a Low Hazard event may request that Board of Aldermen waive the insurance requirement and execute a Hold Harmless and Indemnification Agreement. This event qualifies consideration for Low Hazard because:

We have insurance coverage with City of Long Beach named as additional insured party on policy. See Attachment.

CERTIFICATION AND SIGNATURE: I understand and agree on behalf of the sponsoring organization that: A Certificate of Insurance must be provided which names the City of Long Beach as an additional named insured party on the policy or I am requesting that Board of Aldermen waive the insurance requirement for this Low Hazard Event as identified in paragraph above

related to insurance, and I have executed the Hold Harmless and Indemnification Agreement on behalf of the event sponsor.

All food vendors must be approved by the Harrison County Health Department, and each food or other vendor must provide the City of Long Beach with a Certificate of Insurance which names the City of Long Beach as an additional named insured party on the policy.

The approval of this special event may include additional requirements or limitations, based on the City's review of this application. Applicants who fail to clean up and repair damages to the Event Area may be billed for City services and such failure will be considered for future applications.

As the duly authorized agent of the sponsoring organization, I am applying for approval of this Special Event, affirm the above understandings, and agree that my sponsoring organization will comply with the terms of the written confirmation of approval, and all other City requirements, ordinances and other laws, which apply to this Special Event. By signing this Special Event Application, I declare I am 21 years of age or older.

Sept. 3, 2019
Date

Don J. Paul Stephens
Signature of Sponsoring Organization's Agent

**RETURN THIS APPLICATION at least ninety (90) days before the first day of the event to:
CITY CLERK'S OFFICE - 201 JEFF DAVIS AVENUE - P.O. BOX 929 - LONG BEACH, MS
39560**

ADOPTED: 11.15.11-BOARD ACTION

Minutes of October 1, 2019 Mayor and Board of Aldermen

Event Title: Trunk or Treat 10/31/19

DEPARTMENTAL USE ONLY: Please contact applicant directly with any questions or concerns. Sign and return to the City Clerk's Office, as soon as possible.

Approvals noted below, by departments, indicate they have been made aware of the request and the reasonability of their department has been met.

Police Dept.: [Signature] Recommend Approval: (YES) NO Est. Economic Impact: \$ 0

Fire Dept.: [Signature] Recommend Approval: (YES) NO Est. Economic Impact: \$ 0

Public Works: 32 Recommend Approval: YES NO Est. Economic Impact: \$ 0

Traffic Eng.: _____ Recommend Approval: YES NO Est. Economic Impact: \$ _____

Parks/REC: [Signature] Recommend Approval: (YES) NO Est. Economic Impact: \$ 0

Have businesses been notified for street closures?: YES NO

Reason for disapproval _____

Any special requirements/conditions _____

Insurance / Indemnification Received: _____

Insurance Approved: _____

Board of Aldermen Approved: _____ Denied: _____

Approval/ Denial Mailed: _____

ADOPTED: 11.15.11-BOARD ACTION

Minutes of October 1, 2019 Mayor and Board of Aldermen

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 09/03/2019
PRODUCER PERRETT INSURANCE AGENCY, LLC 114 Rowan Oak Place Terry, MS 39170	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Long Beach First Baptist Church PO Box 338 Long Beach, MS 39560	INSURERS ACCORDING TO COVERAGE	NAIC #
	INSURER A: GuideOne Mutual Insurance	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES
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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURER	ADDITIONAL INSURER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> _____ <input type="checkbox"/> _____ GEN'L AGGREGATE LIMIT APPLIES PER PRO-JECT <input type="checkbox"/> LOC	1265-410	07/01/2019	07/01/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS -- COMP/OP AGG \$ 5,000,000
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL ALLOWED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> Comp. Ded. \$/ Collision Ded. \$				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (PER accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY -- EA ACCIDENT OTHER THAN AUTO ONLY EA ACC AGG
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURENCE \$ AGGREGATE \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNERSHIP/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below.				WC STATUS - OTHER TOR LIMITS E.L. EACH ACCIDENT \$ E.L. DISEASE-EA EMPLOYEE \$ E.L. DISEASE-POLICY LIMIT \$
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Trunk or Treat Event at Town Green

CERTIFICATE HOLDER City of Long Beach Long Beach, MS	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE ISURER, ITS AGENTS OR REPRESENTATIVES AUTHORIZED REPRESENTATIVE
---	---

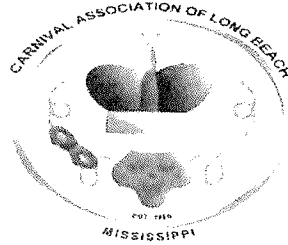
ACORD 25 (2001/08) © ACORD CORPORATION 1988

Alderman Griffin recused herself from the meeting at this time.

Alderman McCaffrey made motion seconded by Alderman Robertson and unanimously carried to approve the following Special Event Application submitted by Carnival Association of Long Beach for Halloween Jubilee, and waive all applicable

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

fees:



P.O. Box 120
Long Beach, MS 39560

September 18, 2019

Honorable George Bass
Mayor, City of Long Beach

Honorable Board of Aldermen
City of Long Beach
Post Office Box 929
Long Beach, MS 39560

Dear Mayor Bass and Aldermen,

The Carnival Association of Long Beach ("CALB") is a 501c3 with a vested interest in the City of Long Beach. We have been in existence since 1960 raising money for not only St. Vincent de Paul School but many local charities.

Every year, we begin the carnival season in August with the announcement of our King and Queen candidates for the upcoming year. This year, Rik Dew and Jennifer Glenn are our candidates who will be working hard, along with the CALB Board, to bring events to Long Beach so our businesses can benefit from the consumers and our City can be shown as our rebuilding continues to thrive.

On Saturday, October 12, 2019, we are collaboratively hosting an inaugural Jack-o-Lantern Jubilee to include trick or treating, pumpkin toss, pumpkin patch and more on the Town Green. This event is being presented by Long Beach Carnival Association, City of Long Beach, Long Beach Dog Park and 39560 Jeepin'.

On Sunday, November 3, 2019, we are hosting the Veterans' Day Parade and Festival. This will include a parade down Jeff Davis and music presented by local choirs and others on the Town Green.

We would sincerely request your approval of our event and a reduction (or free) in the fees assessed for hosting this event as all of our money will go back into our community and local charities, and our businesses will be visited by many participants.

Thank you for your consideration of our request,

Sincerely,

Angie Johnson

Angie Alexander Johnson
Team Captain – Team Dew/Glenn

Minutes of October 1, 2019
Mayor and Board of Aldermen

October 12, 2019
Saturday
8:00 am - 10:00 pm
Halloween Jubilee
Town Green
Event - 6:00 - 9:00 pm

CITY OF LONG BEACH
SPECIAL EVENT APPLICATION
City Clerk's Office * 201 Jeff Davis Avenue * P.O. Box 929 * Long Beach, MS 39560

Date Received By Clerk's Office: 10/23/19 Time: _____ By: CS

Please complete this application in accordance with the City of LONG BEACH Special Events Policy, and return it to the Office of the City Clerk at least 90 calendar days before the first day of the event.

Sponsoring Organization's Legal Name: Carnival Association of Long Beach

Organization Address: P.O. Box 120, LB

Organization Agent: Jason Green Title: President

Phone: 781/323-7554 Work Home _____ During event _____

Agent's Address: jgreen@nemmandfamily.com

Agent's E-Mail Address: _____

Event Name: Halloween Jubilee

Please give a brief description of the proposed special event: Halloween Event - Jeepin' 3950 truck parade, pumpkin toss, music, food, dog pageant, etc.

Event Day(s) & Date(s): Saturday 10/12 Event Time(s): all day setup 6:00-9:00

Set-Up Date & Time: 8:00 am Tear-Down Date & Time: 10:00 pm

Event Location: Town Green

ANNUAL EVENT: Is this event expected to occur next year? YES / NO

How many years has this event occurred? 1st time

ADOPTED: 11.15 11-BOARD ACTION

Minutes of October 1, 2019
Mayor and Board of Aldermen

MAP: (a) If your event will use streets or sidewalks (for a parade, run, etc.) or will use multiple locations, please attach a complete map showing the assembly and dispersal locations and the route plan. (b) Show any streets or parking lots that you are requesting to be blocked off, and location of vendors, if any. A final map, if different, must be provided seven (7) days before the event. (c) Please show an emergency vehicle access lane.

STREET CLOSURES: Start Date/ Time _____ through Date/ Time _____

RESERVED PARKING: Are you requesting reserved parking? YES NO

If yes, list the number of street spaces, City lots or locations where parking is requested:

VENDORS: Food Concessions? YES NO Other Vendors? YES NO

DO YOU PLAN TO HAVE ALCOHOL SOLD/SERVED AT THIS EVENT? YES NO *acquaint*
If yes, are liquor license and liquor liability insurance attached? YES NO
If yes, what time? _____ Until _____

ENTERTAINMENT: Are there any entertainment features related to this event? YES NO *DJ*

If yes, provide an attachment listing all bands/performers, type of entertainment and performance schedule

ATTENDANCE: What is the expected (estimated) attendance for this event? *300*

AMUSEMENT: Do you plan to have any amusement or carnival rides? YES NO

If yes, you are required to obtain a permit through the City Clerk's Office.

REST ROOMS: Are you planning to provide portable rest rooms at the event? YES NO
If yes, how many? _____

As an event organizer, you must consider the availability of rest room facilities during this event. Consideration should be made regarding the type of event, the length of time it will be held, the number of people, etc. You must determine the rest room facilities in the immediate area of the event venue and then identify the potential need for portable facilities. Remember to identify accessible facilities for ADA requirements as well.

OTHER REQUESTS: (i.e., Police Department assistance, Fire Dept., street closures, electrical, etc.) *electrical*

ADOPTED: 11.15.11 BOARD ACTION

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

INSURANCE: All sponsors of special events must carry liability insurance with coverage of at least \$500,000. An event sponsor must provide a valid certificate of insurance naming the City of Long Beach as an additional insured party on the policy. A sponsor of a Low Hazard event may request that Board of Aldermen waive the insurance requirement and execute a Hold Harmless and Indemnification Agreement. This event qualifies consideration for Low Hazard because:

CERTIFICATION AND SIGNATURE: I understand and agree on behalf of the sponsoring organization that: A Certificate of Insurance must be provided which names the City of Long Beach as an additional named insured party on the policy or I am requesting that Board of Aldermen waive the insurance requirement for this Low Hazard Event as identified in paragraph above

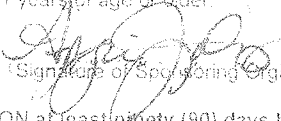
related to insurance, and I have executed the Hold Harmless and Indemnification Agreement on behalf of the event sponsor

All food vendors must be approved by the Harrison County Health Department, and each food or other vendor must provide the City of Long Beach with a Certificate of Insurance which names the City of Long Beach as an additional named insured party on the policy.

The approval of this special event may include additional requirements or limitations, based on the City's review of this application. Applicants who fail to clean up and repair damages to the Event Area may be billed for City services and such failure will be considered for future applications

As the duly authorized agent of the sponsoring organization, I am applying for approval of this Special Event, affirm the above understandings, and agree that my sponsoring organization will comply with the terms of the written confirmation of approval, and all other City requirements, ordinances and other laws, which apply to this Special Event. By signing this Special Event Application, I declare I am 21 years of age or older.

Date


Signature of Sponsoring Organization's Agent

RETURN THIS APPLICATION at least ninety (90) days before the first day of the event to:
CITY CLERK'S OFFICE - 201 JEFF DAVIS AVENUE - P.O. BOX 929 - LONG BEACH, MS 39560

ADOPTED: 11.15.11 BOARD ACTION

Minutes of October 1, 2019
Mayor and Board of Aldermen

Event Title: Halloween Parade 10/12/19

DEPARTMENTAL USE ONLY: Please contact applicant directly with any questions or concerns. Sign and return to the City Clerk's Office, as soon as possible.

Approvals noted below, by departments indicate they have been made aware of the request and the reasonability of their department has been met.

Police Dept: He Recommend Approval: YES NO Est. Economic Impact: \$ _____

Fire Dept: He Recommend Approval: YES NO Est. Economic Impact: \$ 0

Public Works: _____ Recommend Approval: YES NO Est. Economic Impact: \$ _____

Traffic Eng.: _____ Recommend Approval: YES NO Est. Economic Impact: \$ _____

Parks/REC: RH Recommend Approval: YES NO Est. Economic Impact: \$ 0

Have businesses been notified for street closures? YES NO

Reason for disapproval: _____

Any special requirements/conditions: _____

Insurance / Indemnification Received: _____

Insurance Approved: _____

Board of Aldermen Approved: _____ Denied: _____

Approval/ Denial Mailed: _____

ADOPTED: 11.15.11-BOARD ACTION

Minutes of October 1, 2019 Mayor and Board of Aldermen

CITY OF LONG BEACH
PARKS AND RECREATION DEPARTMENT
APPLICATION FOR PERMIT

Bob Paul
228-669-7601

TOWN GREEN

Group / Individual Name (Permittee):

Carnival Association of Long Beach

Telephone Number:

860-4000
Cell

Street Address:

PO Box 120

City:

Long Beach State *MS*

Zip *39560*

Type of Event:

Halloween Jubilee

Start Time:

6:00 PM

Closing Time:

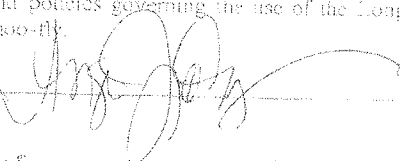
9:00 PM

It is agreed between the City of Long Beach and the permittee that the named facility is reserved on
October 12, 2019
(Date)

The person(s) requesting this permit

1. Agrees to personally accept responsibility for any damage done to the facility, grounds or equipment by persons in his/her group during the reserved period of time, and will hold the City of Long Beach harmless of any damage done to permittee's or permittee's equipment.
2. Agrees to maintain order and control over persons in the group.
3. Agrees to abide by all policies and procedures of the City of Long Beach, the Long Beach Parks and Recreation Department as directed by the contents of the Town Green policy statement.
4. Understands that failure to comply with all the terms of the aforementioned policy as well as any violation of federal, state, or municipal law in conjunction with the use of this facility will result in the cancellation of the privilege of using this facility and will jeopardize any future permit grants for this or any other facility. I hereby agree that I have read and understand the regulations and policies governing the use of the Long Beach Town Green, including the deck area and show-off.

Signature



Date:

9/16/19

Rental Fee \$

Receipt #

Date

Deposit Fee \$

Receipt #

Date

Clean-up Fee \$

Receipt #

Date

PLEASE REVIEW THE POLICY AND RETAIN FOR YOUR RECORDS

Minutes of October 1, 2019
Mayor and Board of Aldermen

STATE OF MISSISSIPPI
COUNTY OF HARRISON
SECOND JUDICIAL DISTRICT

RELEASE AND INDEMNITY

WHEREFORE, for and in consideration of the use of the ground of the City of Long Beach, Town Green and structures erected upon it owned by the City of Long Beach, Mississippi, and located at 115 East 3rd Street, I, LAUB, do hereby release, acquit and forever discharge the City of Long Beach, Mississippi, and all of its respective agents, servants, employees, elected and non-elected officials, successors, predecessors, insurers, attorneys, and any and all other legal entities and persons, of and from any and all claims, demands, actions, damages, liability, or legal recourse of any type, and expenses (including attorneys' fees) in connection with or arising from or out of my use of the Town Green.

WHEREFORE, PREMISES CONSIDERED:

The undersigned further agrees that he/she shall indemnify and hold harmless the City against and from all claims, demands, actions, rights of action, liabilities, losses, judgments, costs, expenses, and attorney fees which shall or may rise by virtue of anything done or omitted to be done by us, including through or by its agents, employees, or other representatives, arising out of, claimed on account of, or in any manner predicated upon the use of the above mentioned property. The undersigned further agrees to protect and save and keep the City harmless and indemnify the City against and from any and all claims, demands, actions, liabilities, judgments, losses, costs, damages or expenses (including attorneys' fees) arising out of, claimed on account of, or in any manner predicated upon any accident or other occurrence arising from the use of the above mentioned property causing injury to persons (including death) or property to whomsoever or whatever in law and equity.

Furthermore, as part of the consideration for using the abovementioned property, the undersigned agree to assume full responsibility and liability for any and all risk of loss by theft, vandalism, destruction, or otherwise, of any and all items of personal property belonging to the organization, group or members thereof while in and about said facility, regardless of whether or not said loss relates to, or arises out of, the use of said facility and, in addition, said organization or group agrees to indemnify and hold the City of Long Beach, its agents and servants, and employees harmless from and against all claims and expenses for same, including attorneys fees.

This, the 14 day of September 20 19
Authorized Signature [Signature]
Witness _____

- 2 -

Alderman Griffin returned to the meeting.

Alderman Lishen made motion seconded by Alderman Griffin and unanimously carried to approve the following contract, with strike throughs recommended by City Attorney Jim Simpson, with AGJ Systems & Networks for networking services at the Police Department, and authorize the Mayor to execute same:

Minutes of October 1, 2019

Mayor and Board of Aldermen



LeapCare Agreement Complete Care Managed Services

1. Terms of Agreement

This Agreement between City of Long Beach, MS Police Department, herein referred to as Client, and AGJ Systems & Networks Inc. (AGJ) is effective upon the date signed and shall remain in force for one year. ~~This Agreement automatically renews beginning on the day immediately following the end of the Initial Term, unless either party gives the other party thirty (30) days prior written notice of its intent not to renew this Agreement.~~

- a) This Agreement may be terminated by the Client or by AGJ for any reason within the first 60 days.
- ~~b) This Agreement may be terminated by the Client upon sixty (60) days written notice if AGJ Systems:~~
 - ~~I. Fails to fulfill in any material respect its obligations under this Agreement and does not cure such failure within thirty (30) days of receipt of such written notice.~~
 - ~~II. Breaches any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days of receipt of such written notice.~~
- c) If either party terminates this Agreement, AGJ will assist in the orderly termination of services, including transfer of services to another provider. Client agrees to pay AGJ the actual costs of rendering such assistance.

2. Coverage

All services will be provided to the Client during the hours of 8:00 am – 5:00 pm Monday through Friday (excluding AGJ holidays as listed on Appendix A). Network and Server Monitoring will be provided to the Client by AGJ through remote means 24/7/365. All services, as well as Services that fall outside this scope, will fall under the provisions of Appendix A. Hardware costs of any kind are not covered under the terms of this Agreement.

Support and Escalation

AGJ Systems will respond to Client's "Trouble Tickets" within four (4) hours for non-emergency issues and within one (1) hour for emergency issues. Trouble Tickets can be opened by email, phone, or through AGJ's client portal. Each call will be assigned a Trouble Ticket number for tracking. Travel to client's office/s within a 50-mile radius of AGJ's office is included in this agreement.

Service outside Normal Working Hours

Emergency services performed outside of the hours of 8:00 am – 5:00 pm Monday through Friday, excluding AGJ holidays, shall be subject to provisions of Appendix A.

Limitation of Liability

In no event shall AGJ be held liable for indirect or consequential damages arising out of service provided hereunder, including but not limited to loss of profits or revenue, loss of use of equipment, lost data, costs of substitute equipment, or other costs.

GLB
WSP

Minutes of October 1, 2019 Mayor and Board of Aldermen

3. Client Equipment Covered

AGJ will provide monitoring, maintenance, helpdesk support, central services, network administration, and virtual CIO services for the Client's office. This agreement covers support for existing computers, servers, networking equipment, and mobile devices at the Client's office.

Item	Included	Qty
Locations	Yes	1
Helpdesk/Reactive Support Team (remote)	Yes	35 users
vCIO, Network Admin, Central Services	Yes	35 users
Allworx Phone System Management	Yes	35 users
Offsite Backup (file level) for server	No	
BDR (Backup and DR server)	No	
Mobile Device Mgmt Software (MDM)	No	
Office 365 email Management	No	
Antivirus and Antimalware Software	Yes	35 users
LeapGuard UTM (Unified Threat Manager)	Yes (if compatible)	1 UTMs
Managed Wireless access point(s)		
Security Awareness Training and Notices (electronic)	Yes	35 users
Remote PC Access	Yes	35 users

4. Backup Protected Equipment and Retention Policy
As stated on your existing BDR Agreement if included.

5. Additional Services

Hardware/Software/System Support

AGJ shall provide support for currently installed hardware and properly licensed software, provided that all hardware is covered under a currently active vendor warranty; or replaceable parts be readily available, and **all software be genuine and vendor-supported**. Software patching is included for business application software. Should any hardware or systems fail to meet these provisions, they will be excluded from this Service Agreement. Should 3rd Party Vendor Support Charges be required in order to resolve any issues, these will be discussed with the Client and passed on to the Client. **Installation of new hardware and software is not included in this agreement.** Updates shall be performed at no charge during normal business hours. Upgrades are excluded from this Service Agreement. An update is a patch that is made available after the product has been released, often to solve problems or glitches, while an upgrade is the replacement of an older version of one product to a newer one.

Monitoring and Reporting Services

AGJ will provide ongoing monitoring of all critical devices as indicated in section 3 (above). AGJ will provide monthly reports as well as document critical alerts, scans, and event resolutions to Client. Additional reports (asset, licensing, etc.) can be provided at Client's request at no additional charge.

Virtual CIO and Network Admin

AGJ Systems will schedule quarterly or annual business reviews (depending upon the client size) with the Client to discuss the state of their current IT infrastructure, upcoming IT developments, and future technology plans of the Client. AGJ Systems will assist in developing an IT budget to meet the Client's future growth projections.

6. Excluded Services

Services rendered under this Agreement does not include:

- 1) The cost of any parts, equipment, or shipping charges of any kind.
- 2) The cost of any Software, Licensing, or Software Renewal or Upgrade Fees of any kind (unless specifically stated in this contract). Antivirus and Antimalware software is included in this agreement.
- 3) The cost of any 3rd Party Vendor or Manufacturer Support or Incident Fees.
- 4) Programming (modification of software code) unless as specified in section 3 (above).
- 5) Installation of new hardware or new software (e.g. line-of-business application).
- 6) Office Telephone System support unless specified in section 3 (above).

GUB
JSB

Minutes of October 1, 2019 Mayor and Board of Aldermen

- 7) Mail security for non-Exchange environments.
- 8) Email Migration Projects
- 9) Camera Systems support unless specified in section 3 (above).

7. Confidentiality and Non-Compete

AGJ and its agents/employees will not use or disclose Client information, except as necessary to or consistent with providing the contracted services, and will protect against unauthorized use.

~~The Client agrees that without written consent, at all times while Client is employing the services of AGJ and for twelve (12) months after the contract period terminates, the Client will not solicit, hire, retain (including as a consultant) any employee or contractor of AGJ or any former employee who has left employment or contract within twelve (12) months prior to such hiring.~~

8. Miscellaneous

This Agreement shall be governed by the laws of the State of Mississippi. It constitutes the entire Agreement between the Client and AGJ Systems and no other promises or conditions were made or set in any other agreement, whether oral or written. This agreement supersedes any prior written or oral agreements between the parties, as of the date executed.

AGJ Systems is not responsible for failure to render services due to circumstances beyond its control including, but not limited to, acts of God.

This agreement may be modified or amended, provided the amendment is made in writing, is mutually agreed upon and is signed by both parties' representative(s).

If any provisions of this agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. Failure or neglect to enforce any of its rights under this agreement will not be deemed to be a waiver of that or any other of its rights.

For all Services provided by AGJ Systems and Networks, AGJ Systems and Networks will use commercially reasonable efforts to follow and recommend industry standard practices to protect all newly installed and Covered Equipment from infiltration. Client understands that, even with these precautions, its network, including any Covered Equipment, is susceptible to infiltration and that AGJ Systems and Networks cannot prevent or be held responsible for such infiltration. In the event of client network infiltration, both parties will work together to assess and minimize damages caused by infiltration and restore all services as quickly as possible. Customer is responsible for securing Cyber Security insurance to mitigate any damages or losses that may result from client network infiltration. AGJ Systems and Networks is not liable for any damages or losses suffered by client due to client network infiltration, and client hereby releases, discharges and holds harmless AGJ Systems and Networks and its employees, agents, officers and directors from and against all claims, liability, losses or damages, and expenses, including attorney's fees, relating to any client network infiltration.

9. Fees and Payment Schedule

Fees for the first year will be \$2,900 per month plus sales tax (sales tax will be added if applicable), invoiced to the Client on a Monthly basis, and will be automatically drafted on the first day of each month. The first month will include an additional one-time setup fee of \$2,900

~~All invoices are "Net 20" (due 20 days after the invoice date). A finance charge of 1.5% per month will be added to late invoices. If an invoice becomes 30 days past due, you will be notified and your account will be put on "credit hold." AGJ requires a 50% deposit on all hardware/software at the time of purchase. The remainder of the hardware/software purchase amount is due when the equipment is delivered.~~

It is understood that any and all Services requested by the Client that fall outside of the terms of this Agreement will be discussed with the client and billed as separate, individual services.

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Minutes of October 1, 2019 Mayor and Board of Aldermen

10. Acceptance of Service Agreement

This Service Agreement covers only those services and equipment listed in section 3 (above).
IN WITNESS WHEREOF, the parties hereto have caused this Service Agreement to be signed by their duly authorized representatives as of the date set forth below.

Accepted by:

Nicole R. Johns

Nicole Johns

AGJ Systems

9/27/19

Date

[Signature]

Authorized Representative

City of Long Beach, MS Police Department

Client

10-2-19

Date

GLB
[Signature]

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

Appendix A

Service Rates

Labor	Rate
Remote and Onsite Server Mgmt. 8am-5pm M-F	INCLUDED
Remote and Onsite Printer Mgmt. 8am-5pm M-F	INCLUDED
Remote and Onsite Network Mgmt. 8am-5pm M-F	INCLUDED
Remote and Onsite PC/Laptop Help Desk 8am-5pm M-F	INCLUDED
24x7x365 Server and Network Monitoring	INCLUDED
Server and PC Proactive Tasks	INCLUDED
Remote PC Management/Help Desk After Hours, Weekends and Holidays	INCLUDED
Remote Printer Management After Hours, Weekends and Holidays	INCLUDED
Remote Network Management After Hours, Weekends and Holidays	INCLUDED
Remote Server Management After Hours, Weekends and Holidays	INCLUDED
Onsite Labor After Hours, Weekends and Holidays	INCLUDED
Server Installations and Projects	\$135/hour
Software Deployment Projects	\$135/hour
New PC Pre-Config * AGJ Purchase	INCLUDED
New PC Pre-Config * Other Vendor Purchase	\$115/hour
New PC On Site Deployment	INCLUDED
Project Manager	\$135/hour
Travel Outside 50-miles (half rate)	\$57.50/hour

*PCs purchased by the client through AGJ will be Pre-configured (benched, 3 hours) at no charge. PCs purchased by the client through other vendors will be Pre-configured at the hourly rate referenced above.

We require Client to send specifications of any technology equipment to AGJ for review before purchase (review at no charge to Client). This will reduce problems with incorrect equipment/specifications if you choose to purchase through another vendor.

AGJ Holiday Schedule: New Year's Day, Mardi Gras, Easter, Memorial Day, Independence Day (4th of July), Labor Day, Veteran's Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

GLB
AGJ

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

**AN ORDER BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF
LONG BEACH APPOINTING A CIVIL SERVICE ATTORNEY, PRESCRIBING
THE DUTIES AND FIXING THE COMPENSATION FOR SUCH OFFICE, 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, pursuant to the authority granted in Miss. Code Ann. § 21-23-3, Haley N. Broome, Esq., Dukes, Dukes, Keating and Faneca, P.A., 2909 13th Street 6th Floor, P.O. Drawer W, Gulfport, MS 39502, an attorney licensed to practice law under the laws of the State of Mississippi and a qualified elector of Harrison County be and is hereby appointed Civil Service Attorney of the City of Long Beach, Mississippi, for a term beginning October 1, 2019, to so serve, however, at the will and pleasure of the Governing Authorities of the City and until her successor shall have been appointed and qualified.

SECTION 2. That the duties of the Civil Service Attorney shall be to act as Attorney in matters coming before the Civil Service Commission as needed or required.

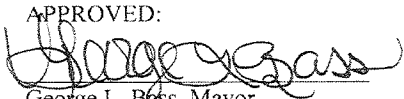
SECTION 3. That for her services when requested Attorney Haley N. Broome, Esq. shall be paid the sum of \$150.00 per hour, to be paid out of the City Treasury.

SECTION 4. This Order shall take effect and be in force from and after its adoption, and shall confirm said appointment effective October 1, 2019.

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

Alderman Ronald Robertson	voted	Aye
Alderman Patricia Bennett	voted	Aye
Alderman Donald Frazer	voted	Aye
Alderman Mark Lishen	voted	Aye
Alderman Timothy McCaffrey, Jr.	voted	Aye
Alderman Kelly Griffin	voted	Aye
Alderman Bernie Parker	voted	Aye

The question having received the affirmation vote of all the Aldermen present and voting, the Mayor declared the motion carried and the resolution adopted this the 1st day of October, 2019.

APPROVED:

George L. Bass, Mayor

ATTEST:


Stacey Dahl, City Clerk

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

Alderman Robertson made motion seconded by Alderman Griffin and unanimously carried to accept the Hazard Mitigation – Rita Lane Acquisition Grant as follows:



U.S. Department of Homeland Security
Region IV
3003 Chamblee Tucker Road
Atlanta, GA 30341

FEMA

September 5, 2019

Mr. Gregory S. Michel, Executive Director
Mississippi Emergency Management Agency
Post Office Box 5644
Pearl, Mississippi 39208

Attention: Ms. Jana Henderson, State Hazard Mitigation Officer

Reference: Hazard Mitigation Grant Program (HMGP) Project 4350-0002;
City of Long Beach Rita Lane Acquisition Project

Dear Mr. Michel:

I am pleased to inform you that the project referenced above has been approved for \$125,700 with a Federal share of \$94,275 (75%) and a non-federal share of \$31,425.

The following is the approved Statement of Work (SOW) for the above referenced project:

The City of Long Beach will acquire and demolish one (1) repetitive loss property located at 701 Rita Lane, Long Beach, MS, 39560; Latitude: 30.349741; Longitude: -89.165220.

Project Conditions:

Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.

This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

Minutes of October 1, 2019 Mayor and Board of Aldermen

CZMA: Condition: The subgrantee is responsible for obtaining any required Coastal Resource Management permits/waivers from the Office of Coastal Resources. Compliance with the Office of Coastal Resources requirements constitutes compliance with the Mississippi Coastal Program. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance will be required at project closeout.

RCRA Condition: Unusable equipment, debris and material shall be disposed of in an approved manner and location. In the event significant items (or evidence thereof) are discovered during implementation of the project, applicant shall handle, manage, and dispose of petroleum products, hazardous materials and toxic waste in accordance to the requirements and to the satisfaction of the governing local, state and federal agencies.

FEMA will not establish activity completion timeframes for individual subgrants. HMGP application period for DR-4350 closed on May 21, 2019. The period of performance (POP) of the grant award will be 36 months from the close of the application period for DR-4350. Any extensions of the grant POP must be submitted to FEMA 60 days prior to the expiration date.

This project must adhere to all program guidelines established for the Hazard Mitigation Grant Program.

For close-out of this project, the Governor's Authorized Representative shall send a letter of request to close the project programmatically and financially. The letter will include the following: the date work on the project was fully completed, the date of the Grantee's final site inspection for the project, the final total project cost and Federal share, any cost underrun, a certification that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the required programmatic, environmental, and any other conditions were met (including attachment of any required documentation) and that the mitigation measure is in compliance with the provisions of the Agreement Articles and this approval letter. A copy of the Grantee's final site inspection report will be enclosed with the close-out request letter. This report will contain, at minimum, all the data fields required for final site inspection reports for our HMGP program. The Grantee will ensure that all documentation necessary to close the project in the Property Site Inventory is also provided in the close-out request letter. For property acquisition and relocation projects, signed and dated copies of the open space deed restrictions must be provided at close-out.

Quarterly progress reports for HMGP projects are required. Please include this HMGP project in your future quarterly reports.

The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP subgrantee SOW may have to be reviewed by all State and Federal agencies participating in the NEPA process.

The State (grantee) must obtain prior approval from the Federal Emergency Management Agency (FEMA) before implementing changes to the approved project SOW. Per the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:

- The grantee must obtain prior written approval for any budget revision which would result in a need for additional funds.
- A change in the scope of work must be approved by FEMA in advance regardless of the budget implications.

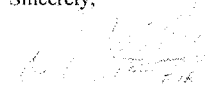
**Minutes of October 1, 2019
Mayor and Board of Aldermen**

- The grantee must notify FEMA as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower cost or earlier completion.
- Any extensions of the grant POP must be submitted to FEMA 60 days prior to the expiration date.

The obligation report is enclosed for your records. Management and environmental reports are available in NEMIS. The obligated funds are available for withdrawal from Smartlink on sub-account number 4350MSP00000025.

If you have any questions, please contact Catherine Strickland of my staff at (770) 220-5328.

Sincerely,



Richard S. Flood, CFM, Chief
Hazard Mitigation Assistance Branch
Mitigation Division

Enclosure:

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

00712

**HAZARD MITIGATION GRANT PROGRAM
AGREEMENT**

Under this Agreement, the interests and responsibilities of the Grantee, herein after referred to as the State, will be executed by the Mississippi Emergency Management Agency. The individual designated to represent the State is Gregory S. Michel Governor's Authorized Representative (GAR). The Subgrantee to this Agreement is Long Beach, City of. The interests and responsibilities of the Subgrantee will be executed by the Subgrantee's designated applicant's agent.

Pursuant to the Hazard Mitigation Grant 4350-0002, funds in the amount of \$94,275.00 are hereby awarded to the Subgrantee as stated below under the following conditions:

Approved Total Project Cost:	<u>\$125,700.00</u>	
Federal Cost Share:	<u>\$94,275.00</u>	<u>75.00%</u>
State Cost Share:	<u>\$0.00</u>	<u>0.00%</u>
Local Cost Share:	<u>\$31,425.00</u>	<u>25.00%</u>

The Federal cost share may not be greater than 75% of the approved Federal project cost and the non-Federal share (State and Local cost share combined) may not be less than 25% of the approved Federal project cost.

The Subgrantee agrees that:

1. He/She has legal authority to apply for assistance on behalf of the Subgrantee.
2. The Subgrantee will provide all necessary financial and managerial resources to meet the terms and conditions of receiving federal and state disaster assistance.
3. The Subgrantee will use disaster assistance funds solely for the purposes for which these funds are provided and as approved by the Governor's Authorized Representative. Allowable costs shall be determined in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 44 CFR § 206 and 44 CFR Part 13.
4. The payments for approved projects will be on an eligible cost reimbursement basis and subject to receipt and approval of invoices.
5. The Subgrantee is aware that limited funding available for mitigation requires cost sharing, and that the Subgrantee is required to provide the full non-federal share for such mitigation activities.
6. The Subgrantee will establish and maintain a proper accounting system to record

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

expenditure of disaster assistance funds in accordance with generally accepted accounting standards or as directed by the Governor's Authorized Representative.

7. The local cost share funding will be available within the specified time.
8. The Subgrantee will give state and federal agencies designated by the Governor's Authorized Representative, access to and the right to examine all records and documents related to use of disaster assistance funds.
9. The Subgrantee will return to the state, within 15 days of such request by the Governor's Authorized Representative, any advance funds which are not supported by audit or other federal or state review of documentation maintained by the Subgrantee.
10. The Subgrantee will comply with all applicable codes and standards as pertains to this project and agree to provide maintenance as appropriate.
11. The Subgrantee will comply with all applicable provisions of federal and state law and regulation in regard to procurement of goods and services.
12. The Subgrantee will comply with all federal and state statutes and regulations relating to non-discrimination. The Subgrantee will establish and maintain an active program of nondiscrimination in disaster assistance as outlined in implementing regulations. This program will encompass all Subgrantee actions pursuant to this Agreement.
13. The Subgrantee will comply with provisions of the Hatch Act limiting the political activities of public employees.
14. The Subgrantee will comply, as applicable, with provisions of the Davis Bacon Act relating to labor standards.
15. The Subgrantee will comply with the National Flood Insurance Program and the community's flood protection ordinance.
16. The Subgrantee will not enter into cost-plus-percentage-of-cost contracts for completion of Hazard Mitigation Grant projects.
17. The Subgrantee will not enter into any contract with any party that is debarred or suspended from participating in State or Federal assistance programs.
18. The Subgrantee will provide the Grantee copies of audit reports that include funds provided under this agreement.
19. The Subgrantee agrees that the disaster relief project contained in this Agreement will be completed by September 5, 2020. Completion dates may be extended upon justification by

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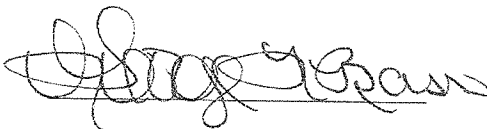
the Subgrantee and approval by the Governor's Authorized Representative.

- 20. There shall be no changes to this Agreement unless mutually agreed upon, in writing, by both parties to the Agreement.

If the Subgrantee violates any of the conditions of this Agreement, or applicable federal and state regulations; the State shall notify the Subgrantee that financial assistance for the project in which the violation occurred will be withheld until such violation has been corrected to the satisfaction of the State. In addition, the State may also withhold all or any portion of financial assistance which has been or is to be made available to the Subgrantee for other disaster relief projects under the Act, this or other agreements, and applicable federal and state regulations until adequate corrective action is taken.

The undersigned does hereby agree with all terms and conditions of this agreement.

Gregory S. Michel
Governor's Authorized Representative


Subgrantee's Authorized Representative

Date

9-12-19
Date

Alderman McCaffrey made motion seconded by Alderman Parker and unanimously carried to approve the following two grants, Contract #503291 and Contract #76-0016-19-804, from Mississippi Department of Transportation for the Senior Citizens Bus, and authorize the Mayor to execute same:

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Melinda L. McGrath
Executive Director

P. O. Box 1850
Jackson, MS 39215-1850
Telephone (601) 359-7001
FAX (601) 359-7110
GoMDOT.com



James A. Williams, III
Deputy Executive Director/Chief Engineer
Lisa M. Hancock
Deputy Executive Director/Administration
Willie Huff
Director, Office of Enforcement
Charles R. Carr
Director, Office of Intermodal Planning

September 6, 2019

Ms. Donna Brown, Director
City of Long Beach
20257 Daugherty Road
Long Beach, MS 39560

Dear Ms. Brown:

**SUBJECT: NOTICE TO PROCEED/MDOT/5339-CONTRACT 503291
DUN 025607524**

We are pleased to inform you that your organization has been approved as a Section 5339 contractor for the 2019-2020 project year. Enclosed for review and signatures are three originals of the referenced contract agreement. This agreement authorizes expenses to be incurred consistent with attached approved project budget, which contains a maximum of **\$51,862** from Section 5339 Program funds.

A thorough review of this agreement is recommended to ensure your understanding of all contract clauses. The below Exhibits are also attached to the contract agreement. **Please ensure that all applicable information is completed on the documents based on the noted explanations and returned with the signed agreements.**

1. **Exhibit C** Security Agreement is applicable to all vehicles and other equipment with a current fair market value of \$5,000 or more purchased on or after October 1, 2008. This agreement is applicable to all Section 5310, 5311, 5316, and 5317 contractors. **(completed upon delivery of vehicles and purchase of equipment)**
2. **Exhibit D** Deed of Trust is applicable to all real property (i.e. facilities/land) acquired or renovated with FTA funds. Execution of this document is required for non-governmental contractors that have FTA funded facilities and land.
3. **Exhibit E** Notice of Federal Interest is applicable to all real property (i.e. facilities) acquired or renovated with FTA funds. Execution of this document is required for governmental/tribal contractors that have FTA funded facilities and land.
4. **Exhibit F** Conveyance of Executory Powers would be filed in the county land records and is intended to prevent the encumbrance or sale of any land or facilities purchased or developed with funds awarded by the Department without the express consent of the Department. Execution of this document is also required for contractors that have FTA funded facilities.

Transportation: The Driving Force of a Strong Economy

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MDOT/5339
September 6, 2019
City of Long Beach
Contract #503291
DUN #025607524
\$51,862
Page 2

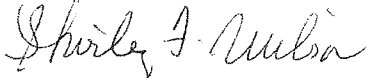
5. **Exhibit G** Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – This document provides regulatory guidance in the awarding and administration of DOT financial assisted programs in a competitive, nondiscriminatory manner providing a level playing field for DBEs. **This document is to be maintained in your project files.**
6. **Exhibit H** EEV Certification and Agreement – This document is to be completed by all FTA funded sub- recipients certifying compliance with Senate Bill 2988 from the 2008 MS Legislative Session. By signing this document you certify compliance with the Mississippi Employment Protection Act as published in the law.

Also enclosed for signatures are three (3) copies of the **Annual Certification of Use of Project Equipment** and three (3) **Authorized Vehicle Inventory**. Each of these documents requires signatures and must be returned to us along with proof of **current vehicle insurance coverage** and a **copy of your project's fidelity bond**. These documents are required to be a part of the official contract file. It is important to remember that the Certification of Use of Project Equipment must accompany the inventory. Also, any changes to the inventory **must** be typed and initialed.

We are requesting that all of the **signed** documents are returned to us no later than **Friday, September 27, 2019**. Your attention is called to the contract number assigned to this project. All correspondence submitted to us concerning this project should include this number as part of the subject line.

If you have questions or require additional assistance, please contact Mr. Roderick Bailey or me by telephone at (601) 359-7800, by fax at (601) 359-7777 or via e-mail @ swilson@mdot.ms.gov

Sincerely,



Shirley F. Wilson
Public Transit Director

SFW:ma

Enclosures

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

**CONTRACT AGREEMENT FOR
SECTION 5339 BUS & BUS FACILITIES PROGRAM
PUBLIC TRANSPORTATION**

**CONTRACT # 503291
DUNS # 25607524**

**GRANT NO. MS-34-0009
FAIN NO #MS-2019-005-00**

This Contract Agreement is made by and between the Mississippi Transportation Commission, a body corporate of the State of Mississippi, acting by and through the duly authorized Executive Director of the Mississippi Department of Transportation (hereinafter referred to as the DEPARTMENT), an Agency of the State of Mississippi, and **City of Long Beach**, (hereinafter referred to as the CONTRACTOR), effective as of the date of latest execution below.

WHEREAS, the Section 5339 Bus and Bus Facilities Program was a discretionary grant program for bus transit projects. This program was repealed under Moving Ahead for Progress in the 21st Century (MAP-21) and replaced with the Section 5339 (49 U.S.C. 5339) Bus and Bus Facilities Formula Program; and

WHEREAS, the goals of the 5339 Bus and Bus Facilities Grant Program as amended, is to provide federal capital assistance to replace, rehabilitate, and purchase buses and related equipment; and to construct bus-related facilities for urban and non-urbanized transportation systems; and

WHEREAS, the CONTRACTOR has submitted to the DEPARTMENT an application for financial assistance to provide public transportation services to the residents of **Harrison County/ies**, Mississippi, hereinafter referred to as the "PROJECT" as described in the project application for financial assistance; and

WHEREAS, the Department is authorizing the Contractor to incur project costs beginning October 1, 2019, and ending September 30, 2020.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the DEPARTMENT and the CONTRACTOR hereby agree as follows:

Section 1. Purpose of Contract Agreement. The purpose of this Contract Agreement is to provide for the undertaking of the PROJECT by the CONTRACTOR as defined by Section 2 below and to state the terms, conditions and mutual understandings of the parties as to the manner in which the PROJECT will be undertaken and completed.

Section 2. Scope of Project. The CONTRACTOR shall undertake and complete the PROJECT as described in the Section 5339 Grant application submitted to the DEPARTMENT on behalf of **City of Long Beach** as approved by the DEPARTMENT (said application is herewith incorporated herein as "**Exhibit A**" to this Contract Agreement by reference and made a part hereof as if fully copied herein in words and figures and is officially on file at the office of the DEPARTMENT) to administer a Transportation Project and provide public transportation service to the residents of **Harrison County/ies**, Mississippi, in accordance with the applicable policies contained in the approved State Management Plan, as well as the terms and conditions of this Contract Agreement.

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Section 3. Period of Performance. The CONTRACTOR shall commence, carry on, and complete the PROJECT within the time periods set forth below.

- a. Non-operating Expenditures. The period of performance for all expenditures under the PROJECT shall be from October 1, 2019 through September 30, 2020.

Section 4. Funding.

- a. Project Funding

(1) Funds to cover the federal share of this PROJECT'S cost are being provided through an appropriation authorized under Section 5339 of the Map-21 as amended, and it shall be the responsibility of the DEPARTMENT to obtain these funds from the Federal Transit Administration (hereinafter referred to as FTA). Failure of the DEPARTMENT to obtain these funds from the FTA shall result, upon notification by the DEPARTMENT to the CONTRACTOR, in termination of the contract. The CONTRACTOR shall initiate and pursue completion all actions necessary to enable the CONTRACTOR to provide its share of the Project costs. The CONTRACTOR'S share of the Project cost may range from 10% - 20% for capital, (minus revenue). The CONTRACTOR shall provide its share of the Project cost at or prior to the time that the DEPARTMENT determines that such funds are needed to meet Project costs.

(2) **The maximum amount of Section 5339 funds payable to the CONTRACTOR for the work described in Section 2 (Scope of Project) shall be \$51,862.**

(3) **Availability of Funds**

It is expressly understood and agreed that the obligation of the DEPARTMENT to proceed under any Contract or Agreement is conditioned upon the availability of funds, the appropriation of funds by the Mississippi Legislature, and/or the receipt of state and/or federal funds, as provided by Section 27-104-25, of the Mississippi Code.

- a. **Suspend and/or Stop Work:** If at any time the funds anticipated for the fulfillment of this Contract or Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the DEPARTMENT for the performance of this Contract or Agreement, then this Contract or Agreement shall be suspended and/or a stop work order issued automatically without any notice to Consultant and/or CONTRACTOR or any surety, for a period not to exceed ten (10) business days, effective immediately upon the date that said funds are not available, without damage, penalty, cost, or expenses to the DEPARTMENT of any kind whatsoever. CONTRACTOR and/or Consultant are responsible for monitoring the actions of the Mississippi Legislature in its enactment, or its failure to enact, any

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budget appropriation for the Mississippi Department of Transportation for the ensuing Fiscal Year, or, to monitor the Mississippi Department of Transportation website at, www.gomdot.com.

In the event that said suspension or stop work is necessary, CONTRACTOR and/or Consultant shall take all necessary steps to minimize the incurrence of costs allocable to the suspension and/or stop work order, and advise all subcontractors and contractors to do the same. Upon expiration of the ten (10) business days, if said funds remain unavailable, then DEPARTMENT may, at its discretion, elect to terminate this contract, or to extend the suspension and/or stop work order of said Contract and/or Agreement.

If a suspension and/or stop work order is not canceled and the work covered by such suspension and/or order is terminated, the CONTRACTOR and/or Consultant may be paid for services rendered prior to the termination. In addition to payment for services rendered prior to the date of termination, the DEPARTMENT may be liable only for the costs, fees, and expenses, if any, for demobilization and close out of this Contract, based on actual time and expenses incurred by the CONTRACTOR and/or Consultant. In no event shall the DEPARTMENT be liable for lost profits or other consequential damages.

Or,

- b. **TERMINATION:** If at any time the funds anticipated for the fulfillment of this Contract or Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the DEPARTMENT for the performance of this Contract or Agreement, the DEPARTMENT shall have the right, upon ten (10) days written notice to the Contractor and/or Consultant, to terminate this Contract and/or Agreement without damage, penalty, cost, or expenses to the DEPARTMENT of any kind whatsoever. The effective date of termination shall be as specified in the notice or at the end of any fiscal funding period wherein the funds are not available.

In addition to payment for services rendered prior to the date of the termination, the DEPARTMENT may be liable only for the costs, fees, and expenses, if any, for demobilization and close out of this Contract, based on actual time and expenses incurred by the CONTRACTOR and/or Vendor. In no event shall the Commission be liable for lost profits or other consequential damages.

- b. Allowable Cost. Expenditures made by the CONTRACTOR shall be reimbursed as allowable costs to the extent they meet all of the requirements set forth below. The expenditures must be:

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- (1) Made in conformance with the Project description and the approved Project budget herewith incorporated by reference and set forth as **Exhibit B** and all other provisions of this Contract Agreement;
- (2) Necessary in order to accomplish the PROJECT;
- (3) Reasonable in amount for the goods or services purchased;
- (4) Actual net costs to the CONTRACTOR (net cost means the price paid minus any refunds, rebates, or other items of value received by the CONTRACTOR which have the effect of reducing the cost actually incurred);
- (5) Incurred and be for work performed after the date of this Contract Agreement;
- (6) In conformance with the standards for allowable costs and other requirements as set forth in the following regulations:
 - (a) OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments," 2 CFR Part 225;
 - (b) OMB Circular A-21, "Cost Principles for Educational Institutions," 2 CFR Part 220;
 - (c) OMB Circular A-122, "Cost Principles for Non-Profit Organizations," 2 CFR Part 230;
 - (d) Final OMB Uniform Guidance: Cost Principles, Audit and Administrative Requirements for Federal Awards Subpart F, Appendices IV, V and IX;

and all amendments thereto to the above listed OMB documents, incorporated herein by reference insofar as applicable hereto;
- (7) To the satisfaction of the DEPARTMENT;
- (8) Treated uniformly and consistently under accounting principles and procedures approved or prescribed by the DEPARTMENT; and
- (9) All purchases must be made consistent with State Laws and Purchasing Procedures.
- (10) farebox revenue and contract revenue (excluding revenues derived from human service agency contracts), received by the CONTRACTOR for services provided under this program or for any other use of equipment purchased through this program. Allowable costs may include eligible costs that are paid by the CONTRACTOR using local contributions that are not required as a part of the match for this project. Local contributions may be

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added to funds committed to the project budget to further the purposes of the project.

- c. Documentation of Project Costs. All costs charged to the Project, including any approved services performed by the CONTRACTOR or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges. Only those expenses which have already been paid by the CONTRACTOR shall be submitted for reimbursement.
- d. Certification Regarding Application and Budget. The CONTRACTOR acknowledges that the DEPARTMENT has relied upon the CONTRACTOR'S application and budget in making this grant award and executing this Agreement. The CONTRACTOR certifies that its application and budget are truthful, accurate and complete and that all revenues and expenses related to this project, irrespective of the source, are properly reflected on the CONTRACTOR'S application and the approved budget. The CONTRACTOR further acknowledges and agrees that any misstatement in the application or budget constitutes grounds for immediate termination and/or cancellation of this Agreement.
- e. Establishment and Maintenance of Accounting Records. The CONTRACTOR shall establish and maintain separate accounts for the PROJECT, either independently or within the existing accounting system, to be known as the Project Accounts. The accounts shall be capable of segregating, identifying and accumulating the allowable project costs.
- f. Payment. The DEPARTMENT will provide payments to the CONTRACTOR for allowable costs that have been paid by the CONTRACTOR when such costs are supported by a properly executed request for payment and related invoices. Payments, at the discretion of the DEPARTMENT, may be made in accordance with the advance payment request procedures as outlined in 2 CFR Part 1201 or the guidance provided by FTA Circular 5010.1D, Grant Management Guidelines and any amendments thereto. The CONTRACTOR shall invoice the DEPARTMENT at least monthly but not more often than two (2) times in any one month for payment of costs incurred and deemed allowable as defined by Section 4(b). Reimbursement requests must be submitted in accordance with schedules that allow for payments to be approved by the Transportation Commission during regular meetings which are held routinely on the second and fourth Tuesday of each month.

The itemized request for payment, including invoices, shall be reviewed and approved by the MDOT staff. A retainage of at least five (5%) percent of the approved payment may be withheld until the PROJECT is completed, and the annual Statement of Revenues and Expenditures or, if applicable, an audit in accordance with OMB Circular A-133 as amended, has been accepted, unless otherwise advised in writing by the Executive Director. Any costs deemed ineligible for reimbursement by the DEPARTMENT in accordance with the terms and conditions of this Contract Agreement shall be deducted from the retainage before final payment is made or the DEPARTMENT may issue a formal written request for repayment. Any rejected or unaccepted costs shall be borne by the CONTRACTOR.

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The CONTRACTOR agrees that reimbursement of any cost, in accordance with the indicated payment methods, does not constitute a final decision by the DEPARTMENT about the allowability of that cost and does not constitute a waiver of any violation by the CONTRACTOR of the terms of this agreement. The CONTRACTOR understands that a final determination concerning allowability will not be made until an audit of the project has been completed. If the DEPARTMENT determines that the contractor is not entitled to receive any part of the federal funds requested, the CONTRACTOR will be notified in writing. Close-out of this project will not alter the CONTRACTOR'S obligation to return any funds due to the DEPARTMENT as a result of later refunds, corrections or other transactions. Project close-out will not affect the DEPARTMENT'S right to disallow costs and recover funds on the basis of a later review or audit.

- g. E-Invoice and E-Payment PayMode This DEPARTMENT requires that all CONTRACTORS submit invoices electronically throughout the term of this agreement and/or contract. CONTRACTOR invoices shall be submitted to the DEPARTMENT using the processes and procedures identified by the DEPARTMENT, which are known and/or available to the CONTRACTOR. Procedures for new CONTRACTORS may be found in the MAAPP Manual in the Vendor File Maintenance sections 11.20.10, 17.20.05 and 17.10.10, and in the related section on requirements for requesting an exemption from electronic payment found in section 17.10.20. CONTRACTOR understands that CONTRACTOR must be enrolled in PayMode e-payment module prior to being enrolled for e-invoicing, and agrees to same, unless CONTRACTOR has applied for and been granted, an exemption. CONTRACTOR may request assistance enrolling by contacting www.mmrs.state.ms.us or by calling the MMRS Call Center at (601) 359-1343. The CONTRACTOR agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. These payments shall be deposited in the bank account of the CONTRACTOR'S choice. CONTRACTOR understands that the DEPARTMENT is exempt from the payment of taxes. All payments shall be in United States Currency.

Payments pursuant to this award will be made for eligible costs documented by invoices for the equipment, work or services incurred in accomplishing project. Final payment will be made after review and approval by the DEPARTMENT of documentation of the completion of the PROJECT and/or any audit documents as may be applicable.

The DEPARTMENT reserves the right to amend or withdraw this award at any time prior to its acceptance by the CONTRACTOR.

- h. Disallowed Costs. In determining the amount of Federal assistance the DEPARTMENT will provide, the DEPARTMENT will exclude all PROJECT costs incurred by the CONTRACTOR prior to the date authorized by this Contract Agreement, and any costs attributable to goods or services received under a contract or other arrangement which has not been concurred in or approved in writing by the DEPARTMENT.
- i. Prohibition Against Use of Federal Funds for Lobbying.

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1. The CONTRACTOR or any sub-recipient shall not use Federal assistance funds and funds provided by way of this contract for publicity or propaganda purposes designed to support or defeat legislation pending before Congress.
 2. The CONTRACTOR agrees that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- j. Interest/Excess Payments. The following requirements apply to the CONTRACTOR:
- Upon notice by the DEPARTMENT to the CONTRACTOR of specific amounts due, the CONTRACTOR shall promptly remit any excess payment of amounts or disallowed costs to the DEPARTMENT. Interest may be assessed from the time of notice and charged for any amounts due to the DEPARTMENT that are not paid as set forth in the State Management Plan.
- k. Deobligation of Funds. The DEPARTMENT reserves the right to deobligated unspent funds prior to project close-out.

Section 5. Reports and Records.

- a. The CONTRACTOR shall advise the DEPARTMENT in writing regarding the progress of the PROJECT at such time and in such format as the DEPARTMENT may require, including but not limited to meetings and interim reports. The CONTRACTOR shall collect and submit to the DEPARTMENT at such time as the DEPARTMENT may require, such financial statements, data, records, contracts, and other documents related to the PROJECT as may be deemed necessary.
- b. The CONTRACTOR and subcontractors shall retain all records pertaining to this PROJECT for a period of three (3) years from the date of final payment by the DEPARTMENT to the CONTRACTOR. However, if any litigation or legal action, by or on behalf of the state and federal government has begun that is not completed at the end of the (3) year period, or of audit finding, litigation or legal action has not been resolved at the end of the (3) year period, the records shall be retained until resolution.

Section 6. Review / Audit, Inspection and Close-out.

- a. Contractors must prepare an annual Statement of Revenues and Expenditures for the current year ending September 30. The Statement of Revenues and Expenditures, along with a computation of Section 5339 funds due the contractor must be submitted to the Department within one hundred and twenty (120) days of the end of the period of performance listed in Section 3. Failure to submit the

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Statement of Revenues and Expenditures and the supporting documentation may result in the forfeiture of the retainage withheld by the Department.

- b. To the extent required, the CONTRACTOR shall cause an audit to be performed in accordance with OMB Circular A-133 as amended and guidance provided by the DEPARTMENT. The audit, if required, shall be submitted to the DEPARTMENT within one hundred eighty (180) days of the period of performance listed in Section 3. Failure to acquire an audit, if and as required, without substantial justification in the opinion of the DEPARTMENT and written concurrence from the Executive Director, will result in the forfeiture of the retainage withheld by the DEPARTMENT, but not limited thereto. Such retainage may be used to pay the cost of an audit or assessment of the project. Any retainage that subsequently remains may be released to the project upon approval by the Commission.
- c. The CONTRACTOR shall permit and shall require third party contractors to permit the DEPARTMENT, the Comptroller General of the United States and the Secretary of the United States Department of Transportation or their authorized representatives to inspect all vehicles, facilities, equipment, materials, and supplies purchased by the CONTRACTOR as part of this project, all transportation services rendered by the CONTRACTOR by the use of such vehicles, facilities and equipment, and all relevant payrolls, project data and records. The CONTRACTOR shall also permit the above named representatives to audit the books, records and accounts of the CONTRACTOR pertaining to the Project.
- d. The CONTRACTOR agrees that any amounts to be refunded to the DEPARTMENT shall be repaid within 30 days of written notification by the DEPARTMENT. Failure to do so may result in delays or suspension of subsequent invoice payments. At a minimum, the following circumstances may result in requests for repayments/refunds:
 - (1) excess program generated income;
 - (2) excess contributed income;
 - (3) other excess income.
- e. Project close-out occurs when the DEPARTMENT notifies the CONTRACTOR in writing and forwards the final federal assistance payment or when the CONTRACTOR'S remittance of the proper refund or repayment has been acknowledged in writing by the DEPARTMENT.

Section 7. Contracts Under This Contract Agreement. Unless otherwise authorized in writing by the DEPARTMENT, the CONTRACTOR shall not assign any portion of the work to be performed under this contract agreement, or execute any contract amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this contract agreement without the prior written concurrence of the DEPARTMENT.

- a. The Contractor shall insure that every subcontract includes any clauses required by the contract agreement, federal statutes and implementing regulations.
- b. All contracts for services will be developed in accordance with the FTA's requirements for competition and/or private sector participation as referenced in the

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guidance contained in Circular 4220.1F as amended entitled "Third Party Procurement".

- c. In no event shall this contract or equipment, materials and goods provided hereunder be treated as assets of the CONTRACTOR in any bankruptcy or similar proceeding.

Section 8. Purchase of Project Vehicles, Facilities and Equipment. The purchase of all Project vehicles and/or equipment financed in whole or in part pursuant to this Contract Agreement shall be in accordance with the applicable state and federal laws and procurement regulations, including state competitive bidding procedures and laws and specifications approved by the DEPARTMENT, the DEPARTMENT'S State Management Plan and will be consistent where applicable with the Common Grant Rule and/or OMB Circular A-110 (Revised), and Circular 4220.1F and any revisions thereof as applicable. The undersigned CONTRACTOR certifies its Procurement Compliance by the executed "Procurement Compliance" Certificate attached hereto and made a part of Exhibit A incorporated herein by reference.

- a. Vehicle Purchases. The DEPARTMENT or CONTRACTOR may purchase vehicles for the Project, using vehicle specifications approved by the DEPARTMENT for the purchase of new vehicles. These vehicles are to include buses, mini-buses, vans and other small vehicles in accordance with the CONTRACTOR'S approved application. All purchases are subject to prior approval of the DEPARTMENT, and must be in accordance with State purchasing laws and approved by the State Bureau of Purchasing. Vehicles purchased by the CONTRACTOR must be approved in writing in advance by the Executive Director of the DEPARTMENT.
- b. Other Equipment, Materials, Goods and Services. Other equipment, materials, goods, and services included in the approved application to be financed in whole or in part pursuant to this Contract Agreement may be procured by the CONTRACTOR in accordance with the above procedures and the following requirements:
 - (1) Specifications and Bid Advertisements. Equipment specifications shall be written so as not to unduly restrict competitive bidding. Equipment specification and advertisement for bid packages shall be approved by the DEPARTMENT prior to submission to prospective bidders.
 - (2) Award of Bids. The DEPARTMENT must concur in the award of bid to procure equipment for the Project made by the CONTRACTOR prior to the execution of an agreement between the CONTRACTOR and any bidder.
 - (3) All purchases must be made consistent with State laws and purchasing procedures and revised OMB Circular A-110 where appropriate.
- c. Real Property. In general the acquisition of real property shall be in accordance with procedures contained in the Departments State Management Plan and any subsequent specific procedures and requirements provided by the Department. The MDOT may confer with FTA concerning the specific requirements governing the acquisition, use or disposition of real property purchased with federal funds.

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Section 9. Title to Project Equipment and Real Property. Title to Project equipment, land and facilities shall be in the CONTRACTOR'S name subject to the restrictions of use and disposition of the Project as set forth herein and in accordance with Section 10, 11 and 14 of this Contract Agreement. The DEPARTMENT shall be listed as first lienholder on and maintain all original titles to project equipment and one set of keys. If this Contract Agreement is terminated, title to Project vehicles shall become vested in the DEPARTMENT as first lien holder and the DEPARTMENT shall have the right to repossess the same.

a. The CONTRACTOR shall grant to the DEPARTMENT a security interest in the Project equipment through the execution of a security agreement in a form acceptable to the DEPARTMENT and by the filing of financing statements necessary to perfect that security interest, and in regard to vehicles purchased by the CONTRACTOR, under the terms of this Contract Agreement. The DEPARTMENT shall be listed as first lienholder on, and maintain all, original titles to vehicles purchased by the CONTRACTOR, under the terms of this Contract Agreement. A copy of the Security Agreement form, acceptable to the DEPARTMENT, is attached hereto as **Exhibit C**.

b. When real property is acquired and/or developed under the terms of this Contract Agreement, CONTRACTOR grants to the DEPARTMENT a security interest in the real property to secure CONTRACTOR'S performance of the terms of this Contract Agreement and shall perfect that security interest by executing a deed of trust and a notice of federal interest in a form acceptable to the DEPARTMENT and by filing that deed of trust in the land records of the county where the real property is located. At least ten days prior to the transfer of funds under the terms of this Contract Agreement for the acquisition and/or development of real property, the CONTRACTOR shall provide to the DEPARTMENT a title certificate from a licensed attorney to be selected by the DEPARTMENT showing that there are no encumbrances on the real property to be acquired and/or developed, and the CONTRACTOR shall have the title certificate updated immediately prior to the transfer of funds for the acquisition and/or development of the subject property. **(A copy of the Deed of Trust form, acceptable to the DEPARTMENT, is attached hereto as Exhibit D.) (A copy of the Notice of Federal Interest Form acceptable to the DEPARTMENT is attached hereto as Exhibit E.)**

c. In addition, when real property is acquired and/or development under the terms of this Contract Agreement, CONTRACTOR shall convey to the DEPARTMENT the CONTRACTOR'S executory power to transfer any interest in the real property until the CONTRACTOR has fulfilled its obligations under the terms of this Contract Agreement. The conveyance of the CONTRACTOR'S executory power shall be in a form acceptable to the DEPARTMENT. **(A copy of the Conveyance of Executory Power form, acceptable to the DEPARTMENT, is attached hereto as Exhibit F) which shall be duly recorded in the land records of the county.**

d. If the CONTRACTOR is a governmental entity, in lieu of b. and c. above, it agrees to execute a notice of federal/state interest. **(a copy of an acceptable form is attached hereto as Exhibit E.)**

Section 10. Use of Project Equipment and Real Property.

a. The CONTRACTOR agrees that the Project equipment, land and facilities shall be used for the provision of transportation service within the area described in the Project description, or some other subsequently authorized area approved by the DEPARTMENT in accordance with Section 14 of this Contract Agreement for the

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duration of the Project. If, during the duration of the Project, any equipment or real property is not used in this manner or is withdrawn from transportation service for more than thirty (30) days, the CONTRACTOR shall notify the DEPARTMENT in writing and shall dispose of such equipment or real property in accordance with guidance by the DEPARTMENT and Section 14 of this Contract Agreement. The DEPARTMENT shall have the right to conduct periodic inspections for the purpose of confirming maintenance pursuant to this section.

- b. Sanctions for Non-Compliance. In the event of the CONTRACTOR'S non-compliance with the provisions of this section, the DEPARTMENT shall impose such sanctions as it may determine to be appropriate, including but not limited to:
- (1) Withholding or discontinuing further reimbursements or funding, and/or;
 - (2) Cancellation, termination or suspension of the Contract Agreement in whole or in part.
- c. The CONTRACTOR shall keep satisfactory records with regard to the use of the PROJECT equipment and shall submit to the DEPARTMENT upon request such information as is required to assure compliance with Title 23 of the CFR.
- d. In accordance with 49 CFR, Part 605, as amended, the CONTRACTOR may use project equipment for the provision of school bus transportation, as long as such use is a modification of regular service to the general public and such use is not for exclusive school bus transportation to the exclusion of general public riders or represents unfair competition with private operators. The CONTRACTOR agrees to comply with the Charter rules described in 49 CFR, Part 604, as amended.
- e. The CONTRACTOR shall neither use nor permit the vehicles, property and equipment provided hereunder to be used for any illegal or unlawful purpose or otherwise subject the vehicles and equipment to confiscation. The CONTRACTOR agrees to reimburse the DEPARTMENT for the fair, retail market value in the event the vehicle and equipment are confiscated while in the possession or control of the CONTRACTOR, together with other such expenses or losses that the DEPARTMENT may incur as a result thereof. The CONTRACTOR further agrees not to permit the vehicles, property and equipment provided hereunder to be used in violation of any Federal, State or municipal/local statute, law, ordinance, rule or regulation applicable to the operation of the vehicles, property and equipment and will indemnify and hold the DEPARTMENT harmless from any and all fines, forfeitures and penalties assessed against such vehicles and equipment.

Section 11. Encumbrance of Project Equipment or Real Property. Except as provided in Section 9 of this Contract Agreement, the CONTRACTOR shall not execute any lease, pledge, mortgage, lien, or other contract (including a grant anticipation note or "Safe Harbor Lease" under Section 168(g)(8) of the Internal Revenue Code of 1954) touching or affecting the Federal interest in any Project facilities or equipment, nor shall it obligate itself in any other manner, with any third party with respect to Project facilities for equipment, unless such lease, pledge, mortgage, lien, contract or other obligation is expressly authorized in writing by the DEPARTMENT; nor shall the CONTRACTOR, by any act or omission of any kind, adversely affect the Federal interest or impair its continuing control over the use of Project facilities or equipment.

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Section 12. Records and Maintenance of Project Real Property and Equipment. For the duration of the PROJECT, the CONTRACTOR shall maintain the Project equipment and facilities at a high level of cleanliness, safety and mechanical soundness. The DEPARTMENT shall have the right to conduct periodic inspections for the purpose of confirming proper use and maintenance pursuant to this Section, and the approved program maintenance procedure. The CONTRACTOR must maintain a project equipment inventory and a formal maintenance program. Property records must include a description of the equipment, vehicle identification number, source, cost, acquisition date, percentage of federal participation, detailed maintenance records and any disposition data.

Section 13. Insurance. The CONTRACTOR shall obtain insurance adequate to protect the Project's property and equipment, as well as public liability insurance. The DEPARTMENT shall be named as loss payee for property and equipment purchased with Section 5339 funds. The CONTRACTOR shall submit evidence of such insurance coverage including documentation of the solicitation process annually to the DEPARTMENT or prior to beginning vehicle operations, and said coverage shall remain in effect at all times during the duration of the PROJECT.

The CONTRACTOR shall obtain and maintain at all times during the duration of the Project insurance coverages adequate to meet the appropriate requirement of the Mississippi Transportation Commission **or any successor agency**. In the absence of **these** requirements the following insurance coverages in the amounts apply:

Comprehensive general liability insurance in an amount not less than one million dollars (\$1,000,000.00), including coverage for blanket contractual liability, broad form property damage, personal injury and bodily injury (including illness, disease and death), and products/completed operations; and

Comprehensive automobile liability insurance, including hired and non-owned vehicles, in an amount not less than one million dollars (\$1,000,000.00), covering bodily injury and death and property damage; and

Blanket employee fidelity bond insurance in an amount not less than fifty thousand dollars (\$50,000.00); and

Workers' compensation insurance in the amount required pursuant to the laws of the State of Mississippi.

All insurance policies required herein shall be issued by a reputable and substantial insurance company or companies licensed to do business in the State of Mississippi, and shall include an endorsement providing substantially as follows:

Insurer may not cancel this policy, modify or amend its terms or reduce coverage for a period of sixty (60) days after the Mississippi Department of Transportation has been notified by certified mail, return receipt requested, of the Insurer's intention to cancel, modify, amend or reduce the coverage.

The CONTRACTOR shall immediately notify the DEPARTMENT in writing of any notices from insurer concerning cancellation or reduction in insurance coverages.

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The DEPARTMENT shall be named as loss payee for property and equipment purchased with Section 5339 funds. On or before the inception of the Period of Performance of this Contract Agreement, the CONTRACTOR shall deliver to the DEPARTMENT a Certificate or Certificates of Insurance, certifying the types and amounts of coverages required herein, the loss payee and the required endorsement.

Section 14. Disposition of Equipment and Real Property. The CONTRACTOR agrees that the Project equipment and property shall be used as described in Section 10 of this Contract Agreement and the approved State Management Plan. If, at any time during the duration of this Project, any real property or equipment with remaining useful life is not used as described above, the CONTRACTOR shall notify the DEPARTMENT in writing and after concurrence by the DEPARTMENT shall dispose of such real property or equipment in accordance with applicable laws and regulations and with the following procedures:

- a. Disposal of real property or equipment with remaining useful life requires written approval from the DEPARTMENT.
 - (1) If the equipment is transferred to another Section 5339 CONTRACTOR, the receiving CONTRACTOR shall be responsible for reimbursing the transferring CONTRACTOR its pro rata share of the current fair market value, based on the twenty percent (20%) local match ratio. The twenty percent (20%) local match shall be based on at least two (2) independent appraisals of the current fair market value. In the absence of independent appraisals value of the equipment shall be based on standard depreciation calculations.
 - (2) If the equipment or real property is approved to be retained by the CONTRACTOR, and the equipment or property has a fair market value of at least \$5,000.00, the CONTRACTOR shall reimburse the DEPARTMENT, in an amount based on the federal pro rata share of the original cost, equal to the current fair market value of the equipment or property. The fair market value must be based upon two (2) independent objective appraisals. These appraisals must be approved by the DEPARTMENT.
 - (3) If the equipment or real property is approved to be sold, it shall be advertised and sold at the highest price obtainable at public sale or via sealed bids. All sales of property or equipment must be consistent with State laws. The DEPARTMENT may authorize the expenses of the sale to be deducted from the proceeds. The proceeds derived from the sale of real property or equipment may be retained by the CONTRACTOR as long as such proceeds are used to support the transportation project approved by the DEPARTMENT. Otherwise the CONTRACTOR shall reimburse the DEPARTMENT its pro rata share of the net proceeds, based on the pro rata share of the original cost.
- b. To request disposal of real property or equipment that has reached its end of useful life, the CONTRACTOR must make a written request of a declaration of end of useful life to the DEPARTMENT. Requests for end of useful life must be made in such a manner and format as required by the DEPARTMENT in the approved program procedures manual or policy statements.

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- c. The CONTRACTOR shall be responsible to the DEPARTMENT for full compliance with all provisions of State laws, OMB Circular A-110 Revised and the "Common Grant Rule" for property disposition, and all other applicable laws, rules and regulations.

Section 15. Contract Changes. Modifications, changes or amendments to this Contract may be made upon mutual agreement of the parties hereto. However, any change, supplement, modification or amendment of any term, provision or condition of this Contract must be in writing and signed by both parties hereto.

Section 16. Compliance with Applicable Laws, Regulations and Certifications. The CONTRACTOR shall, in providing these services, comply with all federal and state laws, licensing standards and other regulations applicable to the provision of these services, including, but not limited to, compliance with FTA Circular 9300.1B and all amendments and changes thereto.

Section 17. Responsibility for Claims and Liabilities. The CONTRACTOR shall indemnify, defend and hold harmless the DEPARTMENT and all its officers, agents and employees from any claim, loss, damage, cost, charge or expense (including, but not limited to, any type of environmental claim, loss, damage cost charge or expense) arising out of any negligent act, actions, neglect or omission by the CONTRACTOR, its agents, employees, or subcontractors during the performance of this CONTRACT, whether direct or indirect, and whether to any person or property for which DEPARTMENT or said parties may be subject.

CONTRACTOR'S obligation to indemnify, defend, and pay for the defense, or at the DEPARTMENT'S option, to participate and associate with the DEPARTMENT in the defense and trial or arbitration of any damage claim, lien or suit and any related settlement negotiations shall be initiated by the DEPARTMENT'S notice of claim for indemnification to CONTRACTOR. The CONTRACTOR'S evaluation of liability, or its inability to evaluate liability, shall not excuse CONTRACTOR'S duty to defend. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the DEPARTMENT entirely responsible shall excuse performance of this provision by the CONTRACTOR. In such case DEPARTMENT shall pay all costs and fees related to this obligation and its enforcement. Should there be a finding of dual or multiple liability, costs and fees shall be apportioned accordingly.

In conjunction herewith, the DEPARTMENT agrees to notify CONTRACTOR as soon as practicable after receipt or notice of any claim involving CONTRACTOR. These indemnities shall not be limited by reason of the listing of any insurance coverage below.

The DEPARTMENT shall have no liability for any claim or claims or any threatened claim or threatened claims of any nature, including without limiting the generality of the foregoing provisions, consequential, special, or other damages.

Section 18. Disputes. Any dispute concerning a question of fact in connection with the PROJECT which is not disposed of by agreement shall be arbitrated by the Executive Director of the Department or such person as the Executive Director may designate on behalf of the Transportation Commission. The decision of the Executive Director or his/her designee shall be final and conclusive, unless within 15 days from the date of receipt of the decision, the CONTRACTOR submits a written request for review of the decision. In that event, the CONTRACTOR shall be provided an opportunity to be heard on the review and offer evidence in support of the CONTRACTOR'S position regarding the decision. The decision of the Executive Director on the review shall be final and conclusive unless determined by a court of competent

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jurisdiction to be unlawful for the reason it was not supported by any substantial evidence, was fraudulent or capricious. Until a final determination is made, the CONTRACTOR shall proceed forthwith with the performance of the CONTRACTOR'S duties under the contract pursuant to the Executive Director's decision.

Section 19. Termination of Contract Agreement. This Contract Agreement may be terminated at any time by mutual consent of both parties. The CONTRACTOR may terminate its participation in the PROJECT by notifying in writing and receiving the concurrence of the DEPARTMENT forty-five (45) days in advance of the termination. The DEPARTMENT may terminate the Contract Agreement by giving the CONTRACTOR fifteen (15) days advance written notice in the event of determination by the DEPARTMENT of nonperformance or any breach of any terms of the contract agreement by the CONTRACTOR. The DEPARTMENT, before issuing written notice of Contract Agreement termination, may allow the CONTRACTOR forty-five (45) days to correct the problems identified. If the DEPARTMENT makes the determination that this Contract Agreement should be terminated due to (a) insufficient performance, (b) a violation of Section 4 of this contract, or any other provision, or (c) a misuse of the funds or equipment provided under this Contract Agreement, then it is agreed that this Contract Agreement shall be terminated upon fifteen (15) day notice in writing from the DEPARTMENT to the CONTRACTOR. The CONTRACTOR shall be entitled to receive compensation for eligible expenses approved by the DEPARTMENT, prior to receiving the termination notice.

CONTRACTOR'S termination of any services heretofore approved through this Contract Agreement requires prior written notification to the DEPARTMENT and DEPARTMENT concurrence and that, at a minimum, CONTRACTOR shall provide thirty (30) days written notice of termination of services published in a newspaper having local circulation, and shall post on all Project vehicles and mail to subcontractors and provide to all passengers such written notice of termination of services.

The DEPARTMENT shall have the absolute right to terminate the project contract at any time, for any reason, and in such event the DEPARTMENT'S obligations and liability hereunder shall be limited solely to payment of any compensation due CONTRACTOR as stated in this Section.

Section 20. Interest of Members of or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract Agreement or to any benefit arising therefrom.

Section 21. Prohibited Interest. No member, officer, or employee of the DEPARTMENT or of the CONTRACTOR shall have any interest, direct or indirect, in this Contract Agreement or the proceeds therefrom.

Section 22. Identification of Documents. All published reports and other documents completed as a part of this Contract Agreement, other than documents exclusively for internal use by the parties hereto, must contain the following disclosure on the inside front cover:

"This document is disseminated under the sponsorship of the U.S. Department of Transportation in the interest of information exchange. The United States Government nor the Mississippi Department of Transportation assumes no liability for the contents or use thereof".

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Section 23. Public Notice Process for Fare/Service Changes. The CONTRACTOR agrees to develop and implement a process to inform the public prior to raising fares, restructuring or terminating transit services. Such a process must include at least the following:

- a. A thirty (30) day written prior notice must be published in at least one newspaper of general circulation, once each week for three consecutive weeks.
- b. Written notice posted daily for at least fifteen (15) days in locations visible to passengers on each vehicle that services the route.
- c. Notification of service change in media or formats that are accessible to ADA eligible riders that are certified by the Project's certification procedures. Notification must be made at least once each week for thirty (30) days.
- d. The DEPARTMENT must be advised in writing and provide written concurrence of any discontinuation of route or service type. Such notice should be provided forty-five (45) days in advance, but must be given at least thirty (30) days prior to the termination of service.
- e. Written notice of at least thirty (30) days must be given to all sub-contractors that have entered into a purchase of service agreement with the contractor.
- f. Service area expansions may be subject to notification and approval requirements of the Mississippi Public Service Commission.

Section 24. Civil Rights. During the performance of this Contract Agreement, the CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- a. Compliance with Regulations: The CONTRACTOR shall comply with Title VI of the Civil Rights Act of 1964, as amended, the Regulations of the UNITED STATES DEPARTMENT of TRANSPORTATION (USDOT) relative to nondiscrimination in federally assisted programs (Title 49, Code of Federal Regulations, Part 21, 23 and 25-28, as amended, hereinafter referred to as the REGULATIONS), and Assurances pursuant thereto which are herein incorporated by reference and made a part of this contract.
- b. Nondiscrimination: The CONTRACTOR, with regard to the work performed during the contract, shall not discriminate on the grounds of sex, age, race, religion, color, disability or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Part 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Subcontract, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR'S obligations under this Contract Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, or sex.

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- d. Information and Reports: The CONTRACTOR shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, and other sources of information, and its facilities as may be determined by the DEPARTMENT or FTA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the DEPARTMENT or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Non-compliance: In the event the CONTRACTOR'S non-compliance with the nondiscrimination provisions of this Contract Agreement, the DEPARTMENT shall impose such contract sanctions as provided by law and as it or FTA may determine to be appropriate, including, but not limited to:
- (1) withholding or discontinuing further reimbursements, other funding and/or
 - (2) cancellation, termination or suspension of the Contract Agreement, in whole or in part.
- f. Incorporation of Provisions: The CONTRACTOR shall include the provisions of paragraph (a) through (e) of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as the DEPARTMENT or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the DEPARTMENT, the CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.
- g. Disadvantaged Business Enterprise (DBE). It is the policy of the Mississippi Department of Transportation to comply with the requirements of 49 CFR, Part 26, to prohibit unlawful discrimination, to meet its goal for DBE participation, to meet that goal whenever possible by race-neutral means, to create a level playing field, and to achieve that amount of DBE participation that would be obtained in a non-discriminatory market place. To meet that objective in any United States Department of Transportation assisted contracts, the "Mississippi Department of Transportation's Disadvantage Business Enterprise Programs for United States Department of Transportation Assisted Contracts".

Neither the CONTRACTOR nor any sub-recipient or sub-contractor shall discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure of the CONTRACTOR to carry out those requirements is a material breach of the contract which may result in the termination of this contract or such other remedies as the Mississippi Department of Transportation deems appropriate. The following provisions are applicable:

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- (1) The CONTRACTOR shall be responsible for meeting the applicable regulations regarding participation by Disadvantaged Business Enterprises (DBE) in the Department of Transportation programs set forth in 49 CFR, Part 26, or any revision or supplement thereto. Pursuant to the requirements of 49 CFR, Part 26, the following statements regarding disadvantaged business enterprises are included in, and made a part of this Contract Agreement:
- (a) Policy. It is the policy of the United States Department of Transportation (USDOT) and the DEPARTMENT that disadvantaged business enterprises as defined in 49 CFR, Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Contract Agreement. Consequently the DBE requirements of 49 CFR, Part 26 apply to this Contract Agreement.
- (b) DBE Obligation. The DEPARTMENT and the CONTRACTOR agree to ensure that disadvantaged business enterprises as defined in 49 CFR, Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this contract agreement.
- In this regard the DEPARTMENT and the CONTRACTOR shall take all necessary and reasonable steps in accordance with 49 CFR, Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts that relate to this Contract Agreement. The DEPARTMENT and CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts using Section 5339 funds.
- (2) As a condition of assistance, the DEPARTMENT has submitted and received approval of a Disadvantaged Business Enterprise Program (DBE), that was developed consistent with guidance contained in the Federal Register 49 CFR, Part 26 "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs; Final Rule", dated February 2, 1999 (herewith incorporated by reference and set forth as **Exhibit G**). This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance contact agreement. Upon notification to the CONTRACTOR of its failure to carry out the approved program, the DEPARTMENT shall impose such sanctions as noted in 49 CFR, Part 26, which sanctions may include termination of the agreement or contract by the CONTRACTOR or such remedy as the CONTRACTOR deems appropriate.
- (3) The CONTRACTOR shall advise each recipient, contractor, and subcontractor that failure to carry out the requirements set forth in 49 CFR, Part 26 shall constitute a breach of contract and, after the notification to the DEPARTMENT, may result in termination of the agreement or contract by the CONTRACTOR or such remedy as the CONTRACTOR deems appropriate.

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- (4) The CONTRACTOR shall take action concerning DBEs as follows:
- (a) The CONTRACTOR shall not exclude DBEs from participation in business opportunities by entering into long-term, exclusive agreements with non-DBEs for operation of major transportation-related activities, for the provision of goods and services to the facility or to the public on the facility.
 - (b) A CONTRACTOR that is required to submit affirmative action programs under 49 CFR, Part 26 that has business opportunities for leases shall submit to the DEPARTMENT for approval their programs' overall goals for the participation as lessees of firms owned and controlled by disadvantaged persons. These goals shall be for a specified period of time and shall be based on the factors listed in 49 CFR, Part 26. The CONTRACTOR shall review these goals at least annually, and whenever the goals expire. The review shall analyze projected versus actual DBE participation during the period covered by the review and any changes in factual circumstances affecting the selection of goals. Following each review, the CONTRACTOR shall submit new overall goals to the DEPARTMENT for approval. A CONTRACTOR that fails to meet its goals for DBE lessees shall demonstrate to the DEPARTMENT in writing that it made reasonable efforts to meet the goals.
 - (c) Except as provided in this section, the CONTRACTOR is required to include lessees in affirmative action programs. Lessees themselves are not subject to the requirements of the Part 26, except for the objective of 49 CFR, Part 26 to avoid discrimination against DBEs.

Section 25. Equal Employment Opportunity. In connection with the execution of this Contract Agreement, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex age, disability, or national origin. The CONTRACTOR shall comply with Executive Order 11246 as amended by Executive Order 11375, and as supplemented by DOL regulations (41 CFR, Part 60) and shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex age, disability, or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

Section 26. Section 504 and ADA Requirements. The CONTRACTOR shall comply with all the requirements imposed by Section 504 of the Rehabilitation Act of 1973 (P.L. 93.112, 29 U.S.C. 794 et seq.); the Americans with Disabilities Act of 1990 (P.L. 101-336, 42 U.S.C 12101 - 12213), the Regulations of the United States Department of Transportation issued thereunder (49 CFR, Part 27), the Americans with Disabilities Act of 1990 (ADA) (49 CFR, Parts 27, 37 and 38) and the Assurance by the CONTRACTOR pursuant thereto including any amendments.

Section 27. Immigration Reform and Control Act of 1986. *CONTRACTOR represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq of the Mississippi Code Annotated (Supp 2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform*

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and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. CONTRACTOR agrees to maintain records of such compliance and, upon request of the State **and approval of the Social Security Administration or Department of Homeland Security, where required**, to provide a copy of each such verification to the State. CONTRACTOR further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. CONTRACTOR understands and agrees that any breach of these warranties may subject CONTRACTOR to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to CONTRACTOR by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, CONTRACTOR would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit. As of July 1, 2008, the CONTRACTOR is required to provide to the Mississippi Department of Transportation ("MDOT") a Certification and Agreement (**Exhibit H**) prior to the execution of the contract. The CONTRACTOR is solely responsible for compliance with the requirements of the Mississippi Employment Protection Act.

It is agreed by the parties that no person employed by the CONTRACTOR pursuant to the provisions hereof will be considered an agent or employee of the DEPARTMENT or the Mississippi Department of Transportation.

It is further agreed by the parties that no provision of this Agreement is intended nor shall it be construed to give rise to a third party beneficiary claim on the person or entity not a party hereto.

Section 28. Section 13(c) Labor Standards. In connection with the execution of this contract, the CONTRACTOR shall protect the interest of employees affected by federal assistance as part of the Project, as provided by Section 13(c) of the Federal Transit Act of 1991, and Section 49 U.S.C. 5333 (b), and the assurance by the CONTRACTOR pursuant thereto. The CONTRACTOR shall be financially responsible for the application of the conditions of Section 13(c).

Section 29. Other Labor Provisions. The CONTRACTOR shall be responsible for meeting the statutory and regulatory provisions of the "Contract Work Hours and Safety Standards Act", including, but not limited to meeting the statutory requirements of 40 U.S. C. 3701 et seq. and 40 U.S.C. 3141 et seq. as amended and regulations set forth at 29 CFR Parts 4, 5, 6 and 70 through 240, as amended for non-construction contracts of \$2,500 or more that involve the employment of mechanics or laborers. Pursuant to the requirements of 40 U.S.C. 3701 et seq., as amended 40 U.S.C. 3141 et seq. as amended and the regulations set forth at 29 CFR Parts 4, 5, 6 and 70 through 240, as amended, the following statements are made part of this Contract Agreement:

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

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b. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (b)(1) of 29 CFR Section 5.5, the CONTRACTOR and any subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages which shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b) (1) of 29 CFR, Section 5.5 in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5.

c. Withholding for Unpaid Wages and Liquidated Damages. USDOT or the recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any monies payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) (2) of 29 CFR, Section 5.5.

d. Non-construction Grants. The CONTRACTOR or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the recipient shall require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the CONTRACTOR or subcontractor for inspection, copying, or transcription by authorized representatives of USDOT and the Department of Labor, and the CONTRACTOR or subcontractor will permit such representatives to interview employees during working hours on the job.

e. Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs a. through e. of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs a. through e. of this paragraph.

f. Furthermore, the CONTRACTOR is responsible for providing Worker's Compensation for its employees.

Section 30. Environmental Regulation. The CONTRACTOR agrees (on projects with cost in excess of \$100,000) to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), Section 508 of the Clean Water Act (33 U.S.C. 1368, Executive Order 11738 and Environmental Protection Agency regulations (40 CFR) and any amendments thereto. All violations shall be reported to the DEPARTMENT and to the U.S.E.P.A. Assistant Administrator for enforcement (EN-329).

Section 31. Energy Efficiency. The CONTRACTOR agrees to recognize mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163) and any amendments thereto.

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Section 32. Settlement of Third Party Contract Disputes or Breaches. FTA has a vested interest in the settlement of disputes, defaults, or breaches involving Section 5339 federally assisted third party contracts. FTA retains a right to a proportionate share, based on the percentage of the federal share committed to the Project, of any proceeds derived from any third party recovery. Therefore, the CONTRACTOR shall avail itself of all legal rights available under any third party contract. The CONTRACTOR shall notify the DEPARTMENT of any current or prospective litigation pertaining to any third party contract. The DEPARTMENT and FTA reserves the right to concur in any compromise or settlement of the CONTRACTOR'S claim(s) involving any third party contract, before making Federal assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved unless the DEPARTMENT and FTA permit otherwise.

Section 33. Private Sector Participation. The CONTRACTOR agrees to abide by the private sector participation guidance contained in the FTA's private sector policy of October 22, 1984 and any amendments thereto, and the DEPARTMENT'S State Management Plan to ensure that private for-profit, private non-profit and other public agencies are provided reasonable notice to present their views concerning local plans, program and projects.

- a. The CONTRACTOR shall provide information necessary for the DEPARTMENT to make the required assurance to the FTA; and
- b. The CONTRACTOR must develop and implement a local private sector participation procedure that includes defined complaint procedures and is consistent with the requirements of the DEPARTMENT'S State Management Plan.

Section 34. Ethics. The CONTRACTOR shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts supported by Federal funds. Such code or standards shall provide that no employee, officer, or agent of the CONTRACTOR shall participate in the selection, or in the award, or in the administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:

- a. the employee, officer, or agent;
- b. any member of his or her immediate family;
- c. his or her partner; or
- d. an organization that employs, or is to employ, any of the above.

The code or standards shall also provide that the CONTRACTOR'S officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from subcontractors, potential subcontractors, or parties to the subcontracts. The CONTRACTOR may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State, Federal or local law, policies, rules and regulations, such code or standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such code or standards by the CONTRACTOR'S officers, employees, or agents, or by subcontractors or their agents.

Section 35. Effective Date. The effective date of this Contract Agreement shall be the date identified in the period of performance as defined in Section 3 of this contract agreement.

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Section 36. Bonding. Along with this contract, the applicant shall file with the DEPARTMENT a copy of its Fidelity Bond or a Certified Letter acknowledging that a Fidelity Bond is in effect covering the CONTRACTOR against the loss of money and securities or other properties in the amount of at least \$50,000, prior to the inception of this Contract Agreement.

Section 37. Certification Regarding Suspension and Debarment. The undersigned CONTRACTOR certifies herein and by Certification attached hereto as part of Exhibit A and incorporated herein by reference to the best of his or her knowledge and belief that its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Section 38. Certification Regarding Lobbying.

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned CONTRACTOR, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned CONTRACTOR shall complete and submit Standard Form-LLL. "Disclosure Form to Report Lobbying", in accordance with its instructions.
- c. The undersigned CONTRACTOR shall require that the language of this certification be included in the contracts and/or agreements at all tiers (including subcontracts,

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subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Section 39. Governing Law. This Contract Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in a court of competent jurisdiction in Hinds County, State of Mississippi. CONTRACTOR expressly agrees that under no circumstances shall the DEPARTMENT be obligated to pay an attorney's fee for the cost of legal action to or on behalf of the CONTRACTOR.

Section 40. Program Fraud and False or Fraudulent Statements or Related Acts.

a. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U. S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of this Contract Agreement, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or cause to be made, pertaining to the contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

b. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the DEPARTMENT or the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307 as amended, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307 as amended on the CONTRACTOR, to the extent the Federal Government deems appropriate.

c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Section 41. Federal Changes. CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Contract Agreement, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR'S failure to comply shall constitute a material breach of this contract.

Section 42. Incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions include, in part, certain Standard Terms and conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions

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required by USDOT, as set forth in the most current version of FTA Circular 4220.1F, dated March 13, 2013 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any DEPARTMENT requests which would cause the CONTRACTOR to be in violation of the FTA terms and conditions.

Section 43. State and Local Law Disclaimer. Since many of the clauses which are suggested for use by the CONTRACTOR in its procurement documents are affected by both state and federal law requirements, the CONTRACTOR understands that it should consult with its attorney in order to assure appropriate legal guidance regarding the preparation and wording of any of the legal documents it enters pursuant to this Contract Agreement, including, but not limited to, its procurement documents.

Section 44. Substance Abuse. The CONTRACTOR agrees to comply with Federal Transit Administration regulations concerning substance abuse as follows:

- a. The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR, Parts 655 as amended, produce any documentation necessary to establish its compliance and permit any authorized representative of the Department of the USDOT or the DEPARTMENT to inspect the facilities and records associated with the implementation of the program as required under 49 CFR, 655.
- b. The CONTRACTOR further agrees to certify annually its compliance with 49 CFR 655 at such time and in such format as the DEPARTMENT may require.

Section 45. Certifications and Assurances. Certifications and Assurances executed by the CONTRACTOR are attached hereto as a part of Exhibit A (attached hereto and incorporated herein by reference and made a part hereof as if fully copied herein in words and figures).

Section 46. No Government Obligation to Third Parties. The CONTRACTOR acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in our approval of the solicitation or award of the underlying contract:

- a. Absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities of the CONTRACT pertaining to any matter resulting from the underlying contract.
- b. The CONTRACTOR agrees to include the above clause in each subcontract funded in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor.

Section 47. Buy America. The CONTRACTOR agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, as amended, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(c) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

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A bidder or offeror must submit to the CONTRACTOR the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

Section 48. Charter Service Operations. The CONTRACTOR agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, as amended, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. 604.9. Any charter service provided under one of the exceptions must be "incidental," it must not interfere with or detract from the provision of mass transportation.

Section 49. School Bus Operations. Pursuant to 49 U.S.C. 5323(f) and 49 C.F.R. Part 605, as amended, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

Section 50. Recycled Products-Recovered Materials. The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 13693, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

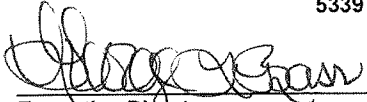
Section 51. Notification of Federal Participation. To the extent required by law, in the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the CONTRACTOR agrees to specify the amount of Federal assistance intended to be used to finance that acquisition and to express that amount of that Federal assistance as a percentage of the total cost of that third party contract.

Section 52. Entire Agreement. This contract constitutes the sole and entire Agreement between the DEPARTMENT and the CONTRACTOR with respect to the project hereof and supersedes any and all prior agreements, discussions and negotiations between the DEPARTMENT and the CONTRACTOR.

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IN WITNESS WHEREOF, this Contract Agreement has been executed by the DEPARTMENT, an agency of the State of Mississippi, and by the CONTRACTOR, and is the requisite authorization for the individuals executing this contract agreement to execute and bind the parties hereto.

City of Long Beach
2019-2020
5339 Contract Agreement # 503291
\$51,862



Executive Director

10-2-19
Date

George L. Bass
Typed/Printed Name

Stacey Dahl
Attest

10/2/19
Date

Stacey Dahl
Typed/Printed Name

MISSISSIPPI TRANSPORTATION COMMISSION

By the duly authorized Executive Director of the Mississippi Department of Transportation

Melinda L. McGrath, P.E.
Executive Director
Mississippi Department of Transportation
Book 21 Page 1200

Date

Attest

Date

Typed/Printed Name

Minutes of October 1, 2019
 Mayor and Board of Aldermen

APPROVED
J. Wilson

BUDGET						
City of Long Beach						
5339 Bus And Bus Facilities Program						
Program Year: October 1, 2019 to September 30, 2020						
FAIN MS-2019-005						
503291						
MS-34-0009						
Capital Item	Number Requested	Detail Description (Accessible Features/Optional Equipment and Price)	Total Cost	Local Match	Federal Funds	Project #
Bus	1	One 24'25" ADA Bus	\$ 64,828.00	\$ 12,966.00	\$ 51,862.00	503291
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
TOTAL			\$ 64,828.00	\$ 12,966.00	\$ 51,862.00	

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EXHIBIT H

Vendor Name: City of Long Beach Contract # 503291

EEV CERTIFICATION AND AGREEMENT

By executing this Certification and Agreement, the undersigned verifies its compliance with Senate Bill 2988 from the 2008 Mississippi Legislative Session, "Mississippi Employment Protection Act," as published in Laws, 2008 and codified in the Mississippi Code of 1972, as amended, and any rules or regulations promulgated by Mississippi Transportation Commission, Department of Employment Security, State Tax Commission, Secretary of State and Department of Human Services in accordance with the Mississippi Administrative Procedures Law (Section 25-43-1 et seq., Mississippi Code of 1972, as amended), stating affirmatively that the individual, firm, or corporation which is contracting with MTC has registered with and is participating in a federal work authorization program* operated by the United States Department of Homeland Security to electronically verify information of newly hired employees pursuant to the Immigration Reform and Control Act of 1986, Pub.L. 99-603, 100 Stat 3359, as amended. The undersigned agrees to inform the MTC if the undersigned is no longer registered or participating in the program.

The undersigned agrees that, should it employ or contract with any subcontractor(s) verification of compliance with the Mississippi Employment Protection Act on the provided MDOT approved form. The undersigned further agrees to maintain records of such compliance and provide a copy of each such verification to MTC at the time such subcontractor(s) is retained for the benefit of the MTC or this Contract.

EEV* Company Identification Number [Required]

The undersigned certifies that the above information is complete, true and correct to the best of my knowledge and belief. The undersigned acknowledges that any violation may be subject to the cancellation of the contract, ineligibility for any state or public contract for up to three (3) years, the loss of any license, permit, certificate or other document granted by any agency, department or government entity for the right to do business in Mississippi for up to one (1) year, or both, any and all additional costs incurred because of the contract cancellation or the loss of any license or permit, and may be subject to additional felony prosecution for knowingly or recklessly accepting employment for compensation from an unauthorized alien as defined by 8 U.S.C §1324a(h)(3), said action punishable by imprisonment for not less than one (1) year nor more than five (5) years, a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or both, in addition to such prosecution and penalties as provided by Federal law.

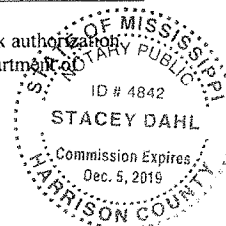
BY: [Signature] Date 10/1/19
Authorized Officer or Agent

George L. Bass Title of Authorized Officer or Agent of Contractor
Printed Name of Authorized Officer or Agent Mayor

SWORN TO AND SUBSCRIBED before me on this the 1 day of Oct, 2019.

Stacey Dahl
NOTARY PUBLIC
My Commission Expires: 12/5/19

*As of the effective date of the Mississippi Employment Protection Act, the applicable federal work authorization program is E-Verify™ operated by the U.S. Citizenship and Immigration Services of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration.



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Attachment A

CHANGE OF INFORMATION FORM

MDOT is updating the Sub-recipient information on file. Please complete the form below and email or fax the updated information to Pam West at (Email) pwest@mdot.ms.gov or (Fax) 601-359-7777.

Company Name City of Long Beach

Company Address P.O. Box 929 Long Beach MS 39560

Name and Title of Office Personnel Kini Gonsoulin, Finance Officer

Type of Service Municipality

Hours of Service Monday - Friday 8am - 5pm

Phone Number 228-863-1556

Fax Number 228-865-0822

Email Address Kini@cityoflongbeach.ms.com

Counties Served Harrison

***Please review the Transit Providers Map on the MDOT website. If any changes are needed, add the correct information to this form.

*

*

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Melinda L. McGrath
Executive Director

P. O. Box 1850
Jackson, MS 39215-1850
Telephone (601) 359-7001
FAX (601) 359-7110
GoMDOT.com



James A. Williams, III
Deputy Executive Director/Chief Engineer
Lisa M. Hancock
Deputy Executive Director/Administration
Willie Huff
Director, Office of Enforcement
Charles R. Carr
Director, Office of Intermodal Planning

September 10, 2019

Ms. Donna Brown, Director
City of Long Beach
20257 Daugherty Road
Long Beach, MS 39560

Dear Ms. Brown:

**SUBJECT: 5310 NOTICE TO PROCEED/MDOT –CONTRACT #76-0016-19-804
DUN#025607524**

Enclosed for signatures are three (3) originals of the Section 5310 Program agreement for the 2019-2020 program year. This agreement authorizes your agency to continue to hold title to and operate project vehicles and equipment previously awarded via the Section 5310 program. Please return the signed agreements along with proof of insurance coverage for existing vehicles, a copy of your project's fidelity bond and the attachments listed below.

A thorough review of this agreement is recommended to ensure your understanding of all contract clauses. The below Exhibits are also attached to the contract agreement. **Please ensure that all applicable information is completed on the documents based on the noted explanations and returned with the signed agreements.**

1. **Exhibit C** Security Agreement is applicable to all vehicles and other equipment with a current fair market value of \$5,000 or more purchased on or after October 1, 2008. This agreement is applicable to all Section 5310, 5311, 5316, and 5317 contractors. **(completed upon delivery of vehicles and purchase of equipment)**
2. **Exhibit D** Deed of Trust is applicable to all real property (i.e. facilities/land) acquired or renovated with FTA funds. Execution of this document is required for non-governmental contractors that have FTA funded facilities and land.
3. **Exhibit E** Notice of Federal Interest is applicable to all real property (i.e. facilities) acquired or renovated with FTA funds. Execution of this document is required for governmental/tribal contractors that have FTA funded facilities and land.
4. **Exhibit F** Conveyance of Executory Powers would be filed in the county land records and is intended to prevent the encumbrance or sale of any land or facilities purchased or developed with funds awarded by the Department without the express consent of the Department. Execution of this document is also required for contractors that have FTA funded facilities.

MDOT

Transportation: The Driving Force of a Strong Economy

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

September 10, 2019
5310
City of Long Beach
Contract #76-0016-19-804
\$0.00
DUN#025607524
Page 2

5. **Exhibit G** Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – This document provides regulatory guidance in the awarding and administration of DOT financial assisted programs in a competitive, nondiscriminatory manner providing a level playing field for DBEs. **This document is to be maintained in your project files.**
6. **Exhibit H** EEV Certification and Agreement – This document is to be completed by all FTA funded sub- recipients certifying compliance with Senate Bill 2988 from the 2008 MS Legislative Session. By signing this document you certify compliance with the Mississippi Employment Protection Act as published in the law.

Also enclosed for signatures are three (3) copies of the **Annual Certification of Use of Project Equipment** and three (3) **Authorized Vehicle Inventory**. Each of these documents requires signatures and must be returned to us along with proof of **current vehicle insurance coverage** and a **copy of your project's fidelity bond**. These documents are required to be a part of the official contract file. It is important to remember that the Certification of Use of Project Equipment must accompany the inventory. Also, any changes to the inventory **must** be typed and initialed.

We are requesting that all of the signed documents are returned to us no later than **Friday, September 27, 2019**. Your attention is called to the contract number assigned to this project. All correspondence submitted to us concerning this project should include this number as part of the subject line.

If you have questions or require additional assistance, please contact Mr. Dexter Robinson of my staff or me by telephone at (601) 359-7800, by fax at (601) 359-7777 or via e-mail at swilson@mdot.ms.gov.

Sincerely,

Shirley F. Wilson
Public Transit Director

SFW:ma

Enclosure

**Minutes of October 1, 2019
Mayor and Board of Aldermen**

**CONTRACT AGREEMENT FOR
5310 ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES
PUBLIC TRANSPORTATION PROGRAM**

**CONTRACT NO. 76-0016-19-804 CFDA NO. 20.509
FAIN NO #MS-2019-011-00 DUNS NO. 025607524 GRANT NO. MS-16-X018**

This Contract Agreement is made by and between the Mississippi Transportation Commission, a body corporate of the State of Mississippi, acting by and through the duly authorized Executive Director of the Mississippi Department of Transportation (hereinafter referred to as the DEPARTMENT), an Agency of the State of Mississippi, and City of Long Beach (hereinafter referred to as the CONTRACTOR), effective as of the date of latest execution below.

WHEREAS, Chapter 53, (49 U.S.C. Section 5310) as amended, formerly referred to as Section 16 of the Federal Transit Act, provides federal capital, administrative and operating assistance for public transportation in rural and small urban areas by way of a formula grant program to be administered by the State; and

WHEREAS, the goals of the Elderly & Disabled Public Transportation Program are to assist in providing services that meet the special needs of elderly and persons with disabilities for whom public transportation services are unavailable, insufficient or inappropriate; and

WHEREAS, the CONTRACTOR has submitted to the DEPARTMENT an application for financial assistance to provide public transportation services to the residents of Harrison County/ies, Mississippi, hereinafter referred to as the "PROJECT" as described in the project application for financial assistance; and

WHEREAS, the Department is authorizing the Contractor to incur project costs, where appropriate beginning October 1, 2019, and ending September 30, 2020.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the DEPARTMENT and the CONTRACTOR hereby agree as follows:

Section 1. Purpose of Contract Agreement. The purpose of this Contract Agreement is to provide for the authorization to receive federal assistance, maintain title to and operate approved Project equipment by the CONTRACTOR as defined by Section 2 below and to state the terms, conditions and mutual understandings of the parties as to the manner in which the Project will be undertaken and completed.

Section 2. Scope of Project. The CONTRACTOR shall undertake and complete the PROJECT as described in the Section 5310 Grant application submitted to the DEPARTMENT on behalf of **City of Long Beach** as approved by the DEPARTMENT (said application is herewith incorporated herein as "**Exhibit A**" to this Contract Agreement by reference and made a part hereof as if fully copied herein in words and figures and is officially on file at the office of the DEPARTMENT) to administer a Elderly and Disabled Transportation Project and provide transportation service to the residents of **Harrison** County/ies, Mississippi, in accordance with the applicable policies contained in the approved State Management Plan, as well as the terms and conditions of this Contract Agreement.

Section 3. Period of Performance. The CONTRACTOR shall commence, carry on, and complete the PROJECT within the time periods set forth below.

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- a. The period of performance for all expenditures under the PROJECT shall be from October 1, 2019 through September 30, 2020.

Section 4. Funding.

a. Project Funding

- (1) Funds to cover the federal share of this PROJECT's cost are being provided through an appropriation authorized under Section 5310 of the Federal Transit Act of 1991, as amended, and it shall be the responsibility of the DEPARTMENT to obtain these funds from the Federal Transit Administration (hereinafter referred to as FTA). Failure of the DEPARTMENT to obtain these funds from the FTA shall result, upon notification by the DEPARTMENT to the CONTRACTOR, in termination of the contract. The CONTRACTOR shall initiate and pursue completion all actions necessary to enable the CONTRACTOR to provide its share of the Project costs. The CONTRACTOR'S share of the Project cost may range from 10% - 20% for capital. The CONTRACTOR shall provide its share of the Project cost at or prior to the time that the DEPARTMENT determines that such funds are needed to meet Project costs.
- (2) **The maximum amount of Section 5310 funds payable to the CONTRACTOR for the work described in Section 2 (Scope of Project) shall be 0.**
- (3) **Availability of Funds**
It is expressly understood and agreed that the obligation of the DEPARTMENT to proceed under any Contract or Agreement is conditioned upon the availability of funds, the appropriation of funds by the Mississippi Legislature, and/or the receipt of state and/or federal funds, as provided by Section 27-104-25, of the Mississippi Code.

- a. **Suspend and/or Stop Work:** If at any time the funds anticipated for the fulfillment of this Contract or Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the DEPARTMENT for the performance of this Contract or Agreement, then this Contract or Agreement shall be suspended and/or a stop work order issued automatically without any notice to Consultant and/or CONTRACTOR or any surety, for a period not to exceed ten (10) business days, effective immediately upon the date that said funds are not available, without damage, penalty, cost, or expenses to the DEPARTMENT of any kind whatsoever. CONTRACTOR and/or Consultant are responsible for monitoring the actions of the Mississippi Legislature in its enactment, or its failure to enact, any budget appropriation for the Mississippi Department of Transportation

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for the ensuing Fiscal Year, or, to monitor the Mississippi Department of Transportation website at, www.gomdot.com.

In the event that said suspension or stop work is necessary, CONTRACTOR and/or Consultant shall take all necessary steps to minimize the incurrence of costs allocable to the suspension and/or stop work order, and advise all subcontractors and contractors to do the same. Upon expiration of the ten (10) business days, if said funds remain unavailable, then DEPARTMENT may, at its discretion, elect to terminate this contract, or to extend the suspension and/or stop work order of said Contract and/or Agreement.

If a suspension and/or stop work order is not canceled and the work covered by such suspension and/or order is terminated, the CONTRACTOR and/or Consultant may be paid for services rendered prior to the termination. In addition to payment for services rendered prior to the date of termination, the DEPARTMENT may be liable only for the costs, fees, and expenses, if any, for demobilization and close out of this Contract, based on actual time and expenses incurred by the CONTRACTOR and/or Consultant. In no event shall the DEPARTMENT be liable for lost profits or other consequential damages.

Or,

- b. **TERMINATION:** If at any time the funds anticipated for the fulfillment of this Contract or Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the DEPARTMENT for the performance of this Contract or Agreement, the DEPARTMENT shall have the right, upon ten (10) days written notice to the Contractor and/or Consultant, to terminate this Contract and/or Agreement without damage, penalty, cost, or expenses to the DEPARTMENT of any kind whatsoever. The effective date of termination shall be as specified in the notice or at the end of any fiscal funding period wherein the funds are not available.

In addition to payment for services rendered prior to the date of the termination, the DEPARTMENT may be liable only for the costs, fees, and expenses, if any, for demobilization and close out of this Contract, based on actual time and expenses incurred by the CONTRACTOR and/or Vendor. In no event shall the Commission be liable for lost profits or other consequential damages.

- b. Allowable Cost. Expenditures made by the CONTRACTOR shall be reimbursed as allowable costs to the extent they meet all of the requirements set forth below. The expenditures must be:

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- (1) Made in conformance with the Project description and the approved Project budget herewith incorporated by reference and set forth as **Exhibit B** and all other provisions of this Contract Agreement;
- (2) Necessary in order to accomplish the PROJECT;
- (3) Reasonable in amount for the goods or services purchased;
- (4) Actual net costs to the CONTRACTOR (net cost means the price paid minus any refunds, rebates, or other items of value received by the CONTRACTOR which have the effect of reducing the cost actually incurred);
- (5) Incurred and be for work performed after the date of this Contract Agreement;
- (6) In conformance with the standards for allowable costs and other requirements as set forth in the following regulations:
 - (a) OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments," 2 CFR Part 225;
 - (b) OMB Circular A-21, "Cost Principles for Educational Institutions," 2 CFR Part 220;
 - (c) OMB Circular A-122, "Cost Principles for Non-Profit Organizations," 2 CFR Part 230;
 - (d) Final OMB Uniform Guidance: Cost Principles, Audit and Administrative Requirements for Federal Awards Subpart F, Appendices IV, V and IX; and all amendments thereto to the above listed OMB documents, incorporated herein by reference insofar as applicable hereto;
- (7) To the satisfaction of the DEPARTMENT;
- (8) Treated uniformly and consistently under accounting principles and procedures approved or prescribed by the DEPARTMENT; and
- (9) All purchases must be made consistent with State Laws and Purchasing Procedures.
- (10) Allowable costs shall be reduced by **all** income, including, but not limited to, farebox revenue and contract revenue (excluding revenues derived from human service agency contracts), received by the CONTRACTOR for services provided under this program or for any other use of equipment purchased through this program. Allowable costs may include eligible costs that are paid by the CONTRACTOR using local contributions that are not required as a part of the match for this project. Local contributions may be added to funds committed to the project budget to further the purposes of the project.

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- c. Documentation of Project Costs. All costs charged to the Project, including any approved services performed by the CONTRACTOR or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges. Only those expenses which have already been paid by the CONTRACTOR shall be submitted for reimbursement.
- d. Certification Regarding Application and Budget. The CONTRACTOR acknowledges that the DEPARTMENT has relied upon the CONTRACTOR'S application and budget in making this grant award and executing this Agreement. The CONTRACTOR certifies that its application and budget are truthful, accurate and complete and that all revenues and expenses related to this project, irrespective of the source, are properly reflected on the CONTRACTOR'S application and the approved budget. The CONTRACTOR further acknowledges and agrees that any misstatement in the application or budget constitutes grounds for immediate termination and/or cancellation of this Agreement.
- e. Establishment and Maintenance of Accounting Records. The CONTRACTOR shall establish and maintain separate accounts for the PROJECT, either independently or within the existing accounting system, to be known as the Project Accounts. The accounts shall be capable of segregating, identifying and accumulating the allowable project costs.
- f. Payment. The DEPARTMENT will provide payments to the CONTRACTOR for allowable costs that have been paid by the CONTRACTOR when such costs are supported by a properly executed request for payment and related invoices. Payments, at the discretion of the DEPARTMENT, may be made in accordance with the advance payment request procedures as outlined in 2 CFR Part 1201 or the guidance provided by FTA Circular 5010.1D, Grant Management Guidelines and any amendments thereto. The CONTRACTOR shall invoice the DEPARTMENT at least monthly but not more often than two (2) times in any one month for payment of costs incurred and deemed allowable as defined by Section 4(b). Reimbursement requests must be submitted in accordance with schedules that allow for payments to be approved by the Transportation Commission during regular meetings which are held routinely on the second and fourth Tuesday of each month.

The itemized request for payment, including invoices, shall be reviewed and approved by the MDOT staff. A retainage of at least five (5%) percent of the approved payment will be withheld until the PROJECT is completed, and the annual Statement of Revenues and Expenditures or, if applicable, an audit in accordance with OMB Circular A-133 as amended, has been accepted, unless otherwise advised in writing by the Executive Director. Any costs deemed ineligible for reimbursement by the DEPARTMENT in accordance with the terms and conditions of this Contract Agreement shall be deducted from the retainage before final payment is made or the DEPARTMENT may issue a formal written request for repayment. Any rejected or unaccepted costs shall be borne by the CONTRACTOR.

The CONTRACTOR agrees that reimbursement of any cost, in accordance with the indicated payment methods, does not constitute a final decision by the

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DEPARTMENT about the allowability of that cost and does not constitute a waiver of any violation by the CONTRACTOR of the terms of this agreement. The CONTRACTOR understands that a final determination concerning allowability will not be made until an audit of the project has been completed. If the DEPARTMENT determines that the contractor is not entitled to receive any part of the federal funds requested, the CONTRACTOR will be notified in writing. Close-out of this project will not alter the CONTRACTOR'S obligation to return any funds due to the DEPARTMENT as a result of later refunds, corrections or other transactions. Project close-out will not affect the DEPARTMENT'S right to disallow costs and recover funds on the basis of a later review or audit.

- g. E-Invoice and E-Payment PayMode This DEPARTMENT requires that all CONTRACTORS submit invoices electronically throughout the term of this agreement and/or contract. CONTRACTOR invoices shall be submitted to the DEPARTMENT using the processes and procedures identified by the DEPARTMENT, which are known and/or available to the CONTRACTOR. Procedures for new CONTRACTORS may be found in the MAAPP Manual in the Vendor File Maintenance sections 11.20.10, 17.20.05 and 17.10.10, and in the related section on requirements for requesting an exemption from electronic payment found in section 17.10.20. CONTRACTOR understands that CONTRACTOR must be enrolled in PayMode e-payment module prior to being enrolled for e-invoicing, and agrees to same, unless CONTRACTOR has applied for and been granted, an exemption. CONTRACTOR may request assistance enrolling by contacting www.mmrs.state.ms.us or by calling the MMRS Call Center at (601) 359-1343. The CONTRACTOR agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. These payments shall be deposited in the bank account of the CONTRACTOR'S choice. CONTRACTOR understands that the DEPARTMENT is exempt from the payment of taxes. All payments shall be in United States Currency.

Payments pursuant to this award will be made for eligible costs documented by invoices for the equipment, work or services incurred in accomplishing PROJECT. Final payment will be made after review and approval by the DEPARTMENT of documentation of the completion of the PROJECT and/or any audit documents as may be applicable.

The DEPARTMENT reserves the right to amend or withdraw this award at any time prior to its acceptance by the CONTRACTOR.

- h. Disallowed Costs. In determining the amount of Federal assistance the DEPARTMENT will provide, the DEPARTMENT will exclude all PROJECT costs incurred by the CONTRACTOR prior to the date authorized by this Contract Agreement, and any costs attributable to goods or services received under a contract or other arrangement which has not been concurred in or approved in writing by the DEPARTMENT.
- i. Prohibition Against Use of Federal Funds for Lobbying.

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1. The CONTRACTOR or any sub-recipient shall not use Federal assistance funds and funds provided by way of this contract for publicity or propaganda purposes designed to support or defeat legislation pending before Congress.
 2. The CONTRACTOR agrees that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- j. Interest/Excess Payments. The following requirements apply to the CONTRACTOR:
- Upon notice by the DEPARTMENT to the CONTRACTOR of specific amounts due, the CONTRACTOR shall promptly remit any excess payment of amounts or disallowed costs to the DEPARTMENT. Interest may be assessed from the time of notice and charged for any amounts due to the DEPARTMENT that are not paid as set forth in the State Management Plan.
- k. Deobligation of Funds. The DEPARTMENT reserves the right to deobligate unspent funds prior to project close-out.

Section 5. Reports and Records.

- a. The CONTRACTOR shall advise the DEPARTMENT in writing regarding the progress of the PROJECT at such time and in such format as the DEPARTMENT may require, including but not limited to meetings and interim reports. The CONTRACTOR shall collect and submit to the DEPARTMENT at such time as the DEPARTMENT may require, such financial statements, data, records, contracts, and other documents related to the PROJECT as may be deemed necessary.
- b. The CONTRACTOR and subcontractors shall retain all records pertaining to this PROJECT for a period of three (3) years from the date of final payment by the DEPARTMENT to the CONTRACTOR. However, if any litigation or legal action, by or on behalf of the state and federal government has begun that is not completed at the end of the (3) year period, or of audit finding, litigation or legal action has not been resolved at the end of the (3) year period, the records shall be retained until resolution.

Section 6. Review / Audit, Inspection and Close-out.

- a. In the event that the CONTRACTOR receives reimbursements through this agreement, CONTRACTORS must prepare an annual Statement of Revenues and Expenditures for the current year ending September 30. The Statement of Revenues and Expenditures, along with a computation of Section 5310 funds due the contractor must be submitted to the Department within one hundred and twenty (120) days of the end of the period of performance listed in Section 3. Failure to

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submit the Statement of Revenues and Expenditures and the supporting documentation may result in the forfeiture of the retainage withheld by the Department.

- b. To the extent required, the CONTRACTOR shall cause an audit to be performed in accordance with OMB Circular A-133 as amended and guidance provided by the DEPARTMENT. The audit, if required, shall be submitted to the DEPARTMENT within one hundred eighty (180) days of the period of performance listed in Section 3. Failure to acquire an audit, if and as required, without substantial justification in the opinion of the DEPARTMENT and written concurrence from the Executive Director, will result in the forfeiture of the retainage withheld by the DEPARTMENT, but not limited thereto. Such retainage may be used to pay the cost of an audit or assessment of the project. Any retainage that subsequently remains may be released to the project upon approval by the Commission.
- c. The CONTRACTOR shall permit and shall require third party contractors to permit the DEPARTMENT, the Comptroller General of the United States and the Secretary of the United States Department of Transportation or their authorized representatives to inspect all vehicles, facilities, equipment, materials, and supplies purchased by the CONTRACTOR as part of this project, all transportation services rendered by the CONTRACTOR by the use of such vehicles, facilities and equipment, and all relevant payrolls, project data and records. The CONTRACTOR shall also permit the above named representatives to audit the books, records and accounts of the CONTRACTOR pertaining to the Project.
- d. The CONTRACTOR agrees that any amounts to be refunded to the DEPARTMENT shall be repaid within 30 days of written notification by the DEPARTMENT. Failure to do so may result in delays or suspension of subsequent invoice payments. At a minimum, the following circumstances may result in requests for repayments/refunds:
 - (1) excess program generated income;
 - (2) excess contributed income;
 - (3) other excess income.
- e. Project close-out occurs when the DEPARTMENT notifies the CONTRACTOR in writing and forwards the final federal assistance payment or when the CONTRACTOR'S remittance of the proper refund or repayment has been acknowledged in writing by the DEPARTMENT.

Section 7. Contracts Under This Contract Agreement. Unless otherwise authorized in writing by the DEPARTMENT, the CONTRACTOR shall not assign any portion of the work to be performed under this contract agreement, or execute any contract amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this contract agreement without the prior written concurrence of the DEPARTMENT.

- a. The Contractor shall ensure that every subcontract includes any clauses required by the contract agreement, federal statutes and implementing regulations.

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- b. All contracts for services will be developed in accordance with the FTA's requirements for competition and/or private sector participation as referenced in the guidance contained in Circular 4220.1F as amended entitled "Third Party Procurement".
- c. In no event shall this contract or equipment, materials and goods provided hereunder be treated as assets of the CONTRACTOR in any bankruptcy or similar proceeding.

Section 8. Purchase of Project Vehicles, Facilities and Equipment. The purchase of all Project vehicles and/or equipment financed in whole or in part pursuant to this Contract Agreement shall be in accordance with the applicable state and federal laws and procurement regulations, including state competitive bidding procedures and laws and specifications approved by the DEPARTMENT, the DEPARTMENT'S State Management Plan and will be consistent where applicable with the Common Grant Rule and/or OMB Circular A-110 (Revised), and Circular 4220.1F and any revisions thereof as applicable. The undersigned CONTRACTOR certifies its Procurement Compliance by the executed "Procurement Compliance" Certificate attached hereto and made a part of Exhibit A incorporated herein by reference.

- a. Vehicle Purchases. The DEPARTMENT or CONTRACTOR may purchase vehicles for the Project, using vehicle specifications approved by the DEPARTMENT for the purchase of new vehicles. These vehicles are to include buses, mini-buses, vans and other small vehicles in accordance with the CONTRACTOR'S approved application. All purchases are subject to prior approval of the DEPARTMENT, and must be in accordance with State purchasing laws and approved by the State Bureau of Purchasing. Vehicles purchased by the CONTRACTOR must be approved in writing in advance by the Executive Director of the DEPARTMENT.
- b. Other Equipment, Materials, Goods and Services. Other equipment, materials, goods, and services included in the approved application to be financed in whole or in part pursuant to this Contract Agreement may be procured by the CONTRACTOR in accordance with the above procedures and the following requirements:
 - (1) Specifications and Bid Advertisements. Equipment specifications shall be written so as not to unduly restrict competitive bidding. Equipment specification and advertisement for bid packages shall be approved by the DEPARTMENT prior to submission to prospective bidders.
 - (2) Award of Bids. The DEPARTMENT must concur in the award of bid to procure equipment for the Project made by the CONTRACTOR prior to the execution of an agreement between the CONTRACTOR and any bidder.
 - (3) All purchases must be made consistent with State laws and purchasing procedures and revised OMB Circular A-110 where appropriate.
- c. Real Property. In general the acquisition of real property shall be in accordance with procedures contained in the Departments State Management Plan and any subsequent specific procedures and requirements provided by the Department.

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The MDOT may confer with FTA concerning the specific requirements governing the acquisition, use or disposition of real property purchased with federal funds.

Section 9. Title to Project Equipment and Real Property. Title to Project equipment, land and facilities shall be in the CONTRACTOR'S name subject to the restrictions of use and disposition of the Project as set forth herein and in accordance with Section 10, 11 and 14 of this Contract Agreement. The DEPARTMENT shall be listed as first lienholder on and maintain all original titles to project equipment and one set of keys. If this Contract Agreement is terminated, title to Project vehicles shall become vested in the DEPARTMENT as first lien holder and the DEPARTMENT shall have the right to repossess the same.

a. The CONTRACTOR shall grant to the DEPARTMENT a security interest in the Project equipment through the execution of a security agreement in a form acceptable to the DEPARTMENT and by the filing of financing statements necessary to perfect that security interest, and in regard to vehicles purchased by the CONTRACTOR, under the terms of this Contract Agreement. The DEPARTMENT shall be listed as first lienholder on, and maintain all, original titles to vehicles purchased by the CONTRACTOR, under the terms of this Contract Agreement. **A copy of the Security Agreement form, acceptable to the DEPARTMENT, is attached hereto as Exhibit C.**

b. When real property is acquired and/or developed under the terms of this Contract Agreement, CONTRACTOR grants to the DEPARTMENT a security interest in the real property to secure CONTRACTOR'S performance of the terms of this Contract Agreement and shall perfect that security interest by executing a deed of trust in a form acceptable to the DEPARTMENT and by filing that deed of trust in the land records of the county where the real property is located. At least ten days prior to the transfer of funds under the terms of this Contract Agreement for the acquisition and/or development of real property, the CONTRACTOR shall provide to the DEPARTMENT a title certificate from a licensed attorney to be selected by the DEPARTMENT showing that there are no encumbrances on the real property to be acquired and/or developed, and the CONTRACTOR shall have the title certificate updated immediately prior to the transfer of funds for the acquisition and/or development of the subject property. **A copy of the Deed of Trust form, acceptable to the DEPARTMENT, is attached hereto as Exhibit D. A copy of the Notice of Federal Interest Form acceptable to the DEPARTMENT, is attached hereto as Exhibit F which shall be duly recorded in the land records of the county.**

c. In addition, when real property is acquired and/or development under the terms of this Contract Agreement, CONTRACTOR shall convey to the DEPARTMENT the CONTRACTOR'S executory power to transfer any interest in the real property until the CONTRACTOR has fulfilled its obligations under the terms of this Contract Agreement. The conveyance of the CONTRACTOR'S executory power shall be in a form acceptable to the DEPARTMENT. A copy of the Conveyance of Executory Power form, acceptable to the DEPARTMENT, is attached hereto as **Exhibit F which shall be duly recorded in the land records of the county.**

d. If the CONTRACTOR is a governmental entity, in lieu of b. and c. above, it agrees to execute a notice of federal/state interest. **(a copy of an acceptable form is attached hereto as Exhibit E.)**

Section 10. Use of Project Equipment and Real Property.

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- a. The CONTRACTOR agrees that the Project equipment, land and facilities shall be used for the provision of transportation service within the area described in the Project description, or some other subsequently authorized area approved by the DEPARTMENT in accordance with Section 14 of this Contract Agreement for the duration of the Project. If, during the duration of the Project, any equipment or real property is not used in this manner or is withdrawn from transportation service for more than thirty (30) days, the CONTRACTOR shall notify the DEPARTMENT in writing and shall dispose of such equipment or real property in accordance with guidance by the DEPARTMENT and Section 14 of this Contract Agreement. The DEPARTMENT shall have the right to conduct periodic inspections for the purpose of confirming maintenance pursuant to this section.
- b. Sanctions for Non-Compliance. In the event of the CONTRACTOR'S non-compliance with the provisions of this section, the DEPARTMENT shall impose such sanctions as it may determine to be appropriate, including but not limited to:
 - (1) Withholding or discontinuing further reimbursements or funding, and/or;
 - (2) Cancellation, termination or suspension of the Contract Agreement in whole or in part.
- c. The CONTRACTOR shall keep satisfactory records with regard to the use of the PROJECT equipment and shall submit to the DEPARTMENT upon request such information as is required to assure compliance with Title 23 of the CFR.
- d. In accordance with 49 CFR, Part 605, as amended the CONTRACTOR may use project equipment for the provision of school bus transportation, as long as such use is a modification of regular service to the general public and such use is not for exclusive school bus transportation to the exclusion of general public riders or represents unfair competition with private operators. The CONTRACTOR agrees to comply with the Charter rules described in 49 CFR, Part 604, as amended.
- e. The CONTRACTOR shall neither use nor permit the vehicles, property and equipment provided hereunder to be used for any illegal or unlawful purpose or otherwise subject the vehicles and equipment to confiscation. The CONTRACTOR agrees to reimburse the DEPARTMENT for the fair, retail market value in the event the vehicle and equipment are confiscated while in the possession or control of the CONTRACTOR, together with other such expenses or losses that the DEPARTMENT may incur as a result thereof. The CONTRACTOR further agrees not to permit the vehicles, property and equipment provided hereunder to be used in violation of any Federal, State or municipal/local statute, law, ordinance, rule or regulation applicable to the operation of the vehicles, property and equipment and will indemnify and hold the DEPARTMENT harmless from any and all fines, forfeitures and penalties assessed against such vehicles and equipment.

Section 11. Encumbrance of Project Equipment or Real Property. Except as provided in Section 9 of this Contract Agreement, the CONTRACTOR shall not execute any lease, pledge, mortgage, lien, or other contract (including a grant anticipation note or "Safe Harbor Lease" under Section 168(g)(8) of the Internal Revenue Code of 1954) touching or affecting the Federal interest in any Project facilities or equipment, nor shall it obligate itself in any other manner, with any third

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party with respect to Project facilities for equipment, unless such lease, pledge, mortgage, lien, contract or other obligation is expressly authorized in writing by the DEPARTMENT; nor shall the CONTRACTOR, by any act or omission of any kind, adversely affect the Federal interest or impair its continuing control over the use of Project facilities or equipment.

Section 12. Records and Maintenance of Project Real Property and Equipment. For the duration of the PROJECT, the CONTRACTOR shall maintain the Project equipment and facilities at a high level of cleanliness, safety and mechanical soundness. The DEPARTMENT shall have the right to conduct periodic inspections for the purpose of confirming proper use and maintenance pursuant to this Section, and the approved program maintenance procedure. The CONTRACTOR must maintain a project equipment inventory and a formal maintenance program. Property records must include a description of the equipment, vehicle identification number, source, cost, acquisition date, percentage of federal participation, detailed maintenance records and any disposition data.

Section 13. Insurance. The CONTRACTOR shall obtain insurance adequate to protect the Project's property and equipment, as well as public liability insurance. The DEPARTMENT shall be named as loss payee for property and equipment purchased with Section 5310 funds. The CONTRACTOR shall submit evidence of such insurance coverage including documentation of the solicitation process annually to the DEPARTMENT or prior to beginning vehicle operations, and said coverage shall remain in effect at all times during the duration of the PROJECT.

The CONTRACTOR shall obtain and maintain at all times during the duration of the Project insurance coverages adequate to meet the appropriate requirement of the Mississippi Transportation Commission **or any successor agency**. In the absence of **these** requirements the following insurance coverages in the amounts apply:

Comprehensive general liability insurance in an amount not less than one million dollars (\$1,000,000.00), including coverage for blanket contractual liability, broad form property damage, personal injury and bodily injury (including illness, disease and death), and products/completed operations; and

Comprehensive automobile liability insurance, including hired and non-owned vehicles, in an amount not less than one million dollars (\$1,000,000.00), covering bodily injury and death and property damage; and

Blanket employee fidelity bond insurance in an amount not less than fifty thousand dollars (\$50,000.00); and

Workers' compensation insurance in the amount required pursuant to the laws of the State of Mississippi.

All insurance policies required herein shall be issued by a reputable and substantial insurance company or companies licensed to do business in the State of Mississippi, and shall include an endorsement providing substantially as follows:

Insurer may not cancel this policy, modify or amend its terms or reduce coverage for a period of sixty (60) days after the Mississippi Department of Transportation has been notified by certified mail, return receipt requested, of the Insurer's intention to cancel, modify, amend or reduce the coverage.

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The CONTRACTOR shall immediately notify the DEPARTMENT in writing of any notices from insurer concerning cancellation or reduction in insurance coverages.

The DEPARTMENT shall be named as loss payee for property and equipment purchased with Section 5310 funds. On or before the inception of the Period of Performance of this Contract Agreement, the CONTRACTOR shall deliver to the DEPARTMENT a Certificate or Certificates of Insurance, certifying the types and amounts of coverages required herein, the loss payee and the required endorsement.

Section 14. Disposition of Equipment and Real Property. The CONTRACTOR agrees that the Project equipment and property shall be used as described in Section 10 of this Contract Agreement and the approved State Management Plan. If, at any time during the duration of this Project, any real property or equipment with remaining useful life is not used as described above, the CONTRACTOR shall notify the DEPARTMENT in writing and after concurrence by the DEPARTMENT shall dispose of such real property or equipment in accordance with applicable laws and regulations and with the following procedures:

- a. Disposal of real property or equipment with remaining useful life requires written approval from the DEPARTMENT.
 - (1) If the equipment is transferred to another Section 5310 CONTRACTOR, the receiving CONTRACTOR shall be responsible for reimbursing the transferring CONTRACTOR its pro rata share of the current fair market value, based on the twenty percent (20%) local match ratio. The twenty percent (20%) local match shall be based on at least two (2) independent appraisals of the current fair market value. In the absence of independent appraisals value of the equipment shall be based on standard depreciation calculations.
 - (2) If the equipment or real property is approved to be retained by the CONTRACTOR, and the equipment or property has a fair market value of at least \$5,000.00, the CONTRACTOR shall reimburse the DEPARTMENT, in an amount based on the federal pro rata share of the original cost, equal to the current fair market value of the equipment or property. The fair market value must be based upon two (2) independent objective appraisals. These appraisals must be approved by the DEPARTMENT.
 - (3) If the equipment or real property is approved to be sold, it shall be advertised and sold at the highest price obtainable at public sale or via sealed bids. All sales of property or equipment must be consistent with State laws. The DEPARTMENT may authorize the expenses of the sale to be deducted from the proceeds. The proceeds derived from the sale of real property or equipment may be retained by the CONTRACTOR as long as such proceeds are used to support the transportation project approved by the DEPARTMENT. Otherwise the CONTRACTOR shall reimburse the DEPARTMENT its pro rata share of the net proceeds, based on the pro rata share of the original cost.
- b. To request disposal of real property or equipment that has reached its end of useful life, the CONTRACTOR must make a written request of a declaration of end of useful life to the DEPARTMENT. Requests for end of useful life must be made in

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such a manner and format as required by the DEPARTMENT in the approved program procedures manual or policy statements.

- c. The CONTRACTOR shall be responsible to the DEPARTMENT for full compliance with all provisions of State laws, OMB Circular A-110 Revised and the "Common Grant Rule" for property disposition, and all other applicable laws, rules and regulations.

Section 15. Contract Changes. Modifications, changes or amendments to this Contract may be made upon mutual agreement of the parties hereto. However, any change, supplement, modification or amendment of any term, provision or condition of this Contract must be in writing and signed by both parties hereto.

Section 16. Compliance with Applicable Laws, Regulations and Certifications. The CONTRACTOR shall, in providing these services, comply with all federal and state laws, licensing standards and other regulations applicable to the provision of these services.

Section 17. Responsibility for Claims and Liabilities. The CONTRACTOR shall indemnify, defend and hold harmless the DEPARTMENT and all its officers, agents and employees from any claim, loss, damage, cost, charge or expense (including, but not limited to, any type of environmental claim, loss, damage cost charge or expense) arising out of any negligent act, actions, neglect or omission by the CONTRACTOR, its agents, employees, or subcontractors during the performance of this CONTRACT, whether direct or indirect, and whether to any person or property for which DEPARTMENT or said parties may be subject.

CONTRACTOR'S obligation to indemnify, defend, and pay for the defense, or at the DEPARTMENT'S option, to participate and associate with the DEPARTMENT in the defense and trial or arbitration of any damage claim, lien or suit and any related settlement negotiations shall be initiated by the DEPARTMENT'S notice of claim for indemnification to CONTRACTOR. The CONTRACTOR'S evaluation of liability, or its inability to evaluate liability, shall not excuse CONTRACTOR'S duty to defend. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the DEPARTMENT entirely responsible shall excuse performance of this provision by the CONTRACTOR. In such case DEPARTMENT shall pay all costs and fees related to this obligation and its enforcement. Should there be a finding of dual or multiple liability, costs and fees shall be apportioned accordingly.

In conjunction herewith, the DEPARTMENT agrees to notify CONTRACTOR as soon as practicable after receipt or notice of any claim involving CONTRACTOR. These indemnities shall not be limited by reason of the listing of any insurance coverage below.

The DEPARTMENT shall have no liability for any claim or claims or any threatened claim or threatened claims of any nature, including without limiting the generality of the foregoing provisions, consequential, special, or other damages.

Section 18. Disputes. Any dispute concerning a question of fact in connection with the PROJECT which is not disposed of by agreement shall be arbitrated by the Executive Director of the Department or such person as the Executive Director may designate on behalf of the Transportation Commission. The decision of the Executive Director or his/her designee shall be final and conclusive, unless within 15 days from the date of receipt of the decision, the CONTRACTOR submits a written request for review of the decision. In that event, the CONTRACTOR shall be provided an opportunity to be heard on the review and offer evidence in

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support of the CONTRACTOR'S position regarding the decision. The decision of the Executive Director on the review shall be final and conclusive unless determined by a court of competent jurisdiction to be unlawful for the reason it was not supported by any substantial evidence, was fraudulent or capricious. Until a final determination is made, the CONTRACTOR shall proceed forthwith with the performance of the CONTRACTOR'S duties under the contract pursuant to the Executive Director's decision.

Section 19. Termination of Contract Agreement. This Contract Agreement may be terminated at any time by mutual consent of both parties. The CONTRACTOR may terminate its participation in the PROJECT by notifying in writing and receiving the concurrence of the DEPARTMENT forty-five (45) days in advance of the termination. The DEPARTMENT may terminate the Contract Agreement by giving the CONTRACTOR fifteen (15) days advance written notice in the event of determination by the DEPARTMENT of nonperformance or any breach of any terms of the contract agreement by the CONTRACTOR. The DEPARTMENT, before issuing written notice of Contract Agreement termination, may allow the CONTRACTOR forty-five (45) days to correct the problems identified. If the DEPARTMENT makes the determination that this Contract Agreement should be terminated due to (a) insufficient performance, (b) a violation of Section 4 of this contract, or any other provision, or (c) a misuse of the funds or equipment provided under this Contract Agreement, then it is agreed that this Contract Agreement shall be terminated upon fifteen (15) day notice in writing from the DEPARTMENT to the CONTRACTOR. The CONTRACTOR shall be entitled to receive compensation for eligible expenses approved by the DEPARTMENT, prior to receiving the termination notice.

CONTRACTOR'S termination of any services heretofore approved through this Contract Agreement requires prior written notification to the DEPARTMENT and DEPARTMENT concurrence and that, at a minimum, CONTRACTOR shall provide thirty (30) days written notice of termination of services published in a newspaper having local circulation, and shall post on all Project vehicles and mail to subcontractors and provide to all passengers such written notice of termination of services.

The DEPARTMENT shall have the absolute right to terminate the project contract at any time, for any reason, and in such event the DEPARTMENT'S obligations and liability hereunder shall be limited solely to payment of any compensation due CONTRACTOR as stated in this Section.

Section 20. Interest of Members of or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract Agreement or to any benefit arising therefrom.

Section 21. Prohibited Interest. No member, officer, or employee of the DEPARTMENT or of the CONTRACTOR shall have any interest, direct or indirect, in this Contract Agreement or the proceeds therefrom.

Section 22. Identification of Documents. All published reports and other documents completed as a part of this Contract Agreement, other than documents exclusively for internal use by the parties hereto, must contain the following disclosure on the inside front cover:

"This document is disseminated under the sponsorship of the U.S. Department of Transportation in the interest of information exchange. The United States Government nor the Mississippi Department of Transportation assumes no liability for the contents or use thereof".

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Section 23. Public Notice Process for Fare/Service Changes. The CONTRACTOR agrees to develop and implement a process to inform the public prior to raising fares, restructuring or terminating transit services. Such a process must include at least the following:

- a. A thirty (30) day written prior notice must be published in at least one newspaper of general circulation, once each week for three consecutive weeks.
- b. Written notice posted daily for at least fifteen (15) days in locations visible to passengers on each vehicle that services the route.
- c. Notification of service change in media or formats that are accessible to ADA eligible riders that are certified by the Project's certification procedures. Notification must be made at least once each week for thirty (30) days.
- d. The DEPARTMENT must be advised in writing and provide written concurrence of any discontinuation of route or service type. Such notice should be provided forty-five (45) days in advance, but must be given at least thirty (30) days prior to the termination of service.
- e. Written notice of at least thirty (30) days must be given to all sub-contractors that have entered into a purchase of service agreement with the contractor.
- f. Service area expansions may be subject to notification and approval requirements of the Mississippi Public Service Commission.

Section 24. Civil Rights. During the performance of this Contract Agreement, the CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- a. **Compliance with Regulations:** The CONTRACTOR shall comply with Title VI of the Civil Rights Act of 1964, as amended, the Regulations of the UNITED STATES DEPARTMENT of TRANSPORTATION (USDOT) relative to nondiscrimination in federally assisted programs (Title 49, Code of Federal Regulations, Part 21 & 23 and 25-28 as amended, hereinafter referred to as the REGULATIONS), and Assurances pursuant thereto which are herein incorporated by reference and made a part of this contract.
- b. **Nondiscrimination:** The CONTRACTOR, with regard to the work performed during the contract, shall not discriminate on the grounds of sex, age, race, religion, color, disability or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Part 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- c. **Solicitations for Subcontract, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR'S obligations under this Contract Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, or sex.

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- d. Information and Reports: The CONTRACTOR shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, and other sources of information, and its facilities as may be determined by the DEPARTMENT or FTA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the DEPARTMENT or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Non-compliance: In the event the CONTRACTOR'S non-compliance with the nondiscrimination provisions of this Contract Agreement, the DEPARTMENT shall impose such contract sanctions as provided by law and as it or FTA may determine to be appropriate, including, but not limited to:
- (1) withholding or discontinuing further reimbursements, other funding and/or
 - (2) cancellation, termination or suspension of the Contract Agreement, in whole or in part.
- f. Incorporation of Provisions: The CONTRACTOR shall include the provisions of paragraph (a) through (e) of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as the DEPARTMENT or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the DEPARTMENT, the CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.
- g. Disadvantaged Business Enterprise (DBE). It is the policy of the Mississippi Department of Transportation to comply with the requirements of 49 CFR, Part 26, to prohibit unlawful discrimination, to meet its goal for DBE participation, to meet that goal whenever possible by race-neutral means, to create a level playing field, and to achieve that amount of DBE participation that would be obtained in a non-discriminatory market place. To meet that objective in any United States Department of Transportation assisted contracts, the "Mississippi Department of Transportation's Disadvantage Business Enterprise Programs for United States Department of Transportation Assisted Contracts".

Neither the CONTRACTOR nor any sub-recipient or sub-contractor shall discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure of the CONTRACTOR to carry out those requirements is a material breach of the contract which may result in the termination of this contract or such other remedies as the Mississippi Department of Transportation deems appropriate. The following provisions are applicable:

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- (1) The CONTRACTOR shall be responsible for meeting the applicable regulations regarding participation by Disadvantaged Business Enterprises (DBE) in the Department of Transportation programs set forth in 49 CFR, Part 26, or any revision or supplement thereto. Pursuant to the requirements of 49 CFR, Part 26, the following statements regarding disadvantaged business enterprises are included in, and made a part of this Contract Agreement:
- (a) Policy. It is the policy of the United States Department of Transportation (USDOT) and the DEPARTMENT that disadvantaged business enterprises as defined in 49 CFR, Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Contract Agreement. Consequently the DBE requirements of 49 CFR, Part 26 apply to this Contract Agreement.
 - (b) DBE Obligation. The DEPARTMENT and the CONTRACTOR agree to ensure that disadvantaged business enterprises as defined in 49 CFR, Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this contract agreement.

In this regard the DEPARTMENT and the CONTRACTOR shall take all necessary and reasonable steps in accordance with 49 CFR, Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts that relate to this Contract Agreement. The DEPARTMENT and CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts using Section 5310 funds.

- (2) As a condition of assistance, the DEPARTMENT has submitted and received approval of a Disadvantaged Business Enterprise Program (DBE), that was developed consistent with guidance contained in the Federal Register 49 CFR, Part 26 "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs; Final Rule", dated February 2, 1999 (herewith incorporated by reference and set forth as **Exhibit G**). This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance contact agreement. Upon notification to the CONTRACTOR of its failure to carry out the approved program, the DEPARTMENT shall impose such sanctions as noted in 49 CFR, Part 26, which sanctions may include termination of the agreement or contract by the CONTRACTOR or such remedy as the CONTRACTOR deems appropriate.
- (3) The CONTRACTOR shall advise each recipient, contractor, and subcontractor that failure to carry out the requirements set forth in 49 CFR, Part 26 shall constitute a breach of contract and, after the notification to the DEPARTMENT, may result in termination of the agreement or contract by the CONTRACTOR or such remedy as the CONTRACTOR deems appropriate.

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- (4) The CONTRACTOR shall take action concerning DBEs as follows:
- (a) The CONTRACTOR shall not exclude DBEs from participation in business opportunities by entering into long-term, exclusive agreements with non-DBEs for operation of major transportation-related activities, for the provision of goods and services to the facility or to the public on the facility.
 - (b) A CONTRACTOR that is required to submit affirmative action programs under 49 CFR, Part 26 that has business opportunities for leases shall submit to the DEPARTMENT for approval their programs' overall goals for the participation as lessees of firms owned and controlled by disadvantaged persons. These goals shall be for a specified period of time and shall be based on the factors listed in 49 CFR, Part 26. The CONTRACTOR shall review these goals at least annually, and whenever the goals expire. The review shall analyze projected versus actual DBE participation during the period covered by the review and any changes in factual circumstances affecting the selection of goals. Following each review, the CONTRACTOR shall submit new overall goals to the DEPARTMENT for approval. A CONTRACTOR that fails to meet its goals for DBE lessees shall demonstrate to the DEPARTMENT in writing that it made reasonable efforts to meet the goals.
 - (c) Except as provided in this section, the CONTRACTOR is required to include lessees in affirmative action programs. Lessees themselves are not subject to the requirements of the Part 26, except for the objective of 49 CFR, Part 26 to avoid discrimination against DBEs.

Section 25. Equal Employment Opportunity. In connection with the execution of this Contract Agreement, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex age, disability, or national origin. The CONTRACTOR shall comply with Executive Order 11246 as amended by Executive Order 11375, and as supplemented by DOL regulations (41 CFR, Part 60) and shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex age, disability, or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

Section 26. Section 504 and ADA Requirements. The CONTRACTOR shall comply with all the requirements imposed by Section 504 of the Rehabilitation Act of 1973 (P.L. 93.112, 29 U.S.C. 794 et seq.); the Americans with Disabilities Act of 1990 (P.L. 101-336, 42 U.S.C 12101 - 12213), the Regulations of the United States Department of Transportation issued thereunder (49 CFR, Part 27), the Americans with Disabilities Act of 1990 (ADA) (49 CFR, Parts 27, 37 and 38) and the Assurance by the CONTRACTOR pursuant thereto, including any amendments.

Section 27. Immigration Reform and Control Act of 1986. The CONTRACTOR represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, **Section 71-11-1, et seq of the Mississippi Code Annotated (Supp 2008)**, and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration

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*Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. CONTRACTOR agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. CONTRACTOR further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. CONTRACTOR understands and agrees that any breach of these warranties may subject CONTRACTOR to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to CONTRACTOR by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, CONTRACTOR would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit. As of July 1, 2008, the CONTRACTOR is required to provide to the Mississippi Department of Transportation ("MDOT") a Certification and Agreement (**Exhibit G**) prior to the execution of the contract. The CONTRACTOR is solely responsible for compliance with the requirements of the Mississippi Employment Protection Act.*

It is agreed by the parties that no person employed by the CONTRACTOR pursuant to the provisions hereof will be considered an agent or employee of the DEPARTMENT or the Mississippi Department of Transportation.

It is further agreed by the parties that no provision of this agreement is intended nor shall it be construed to give rise to a third party beneficiary claim on the person of entity not a party hereto.

Section 28. Section 13(c) Labor Standards. In connection with the execution of this contract, the CONTRACTOR shall protect the interest of employees affected by federal assistance as part of the Project, as provided by Section 13(c) of the Federal Transit Act of 1991, and 49 U.S.C. 5333 (b) as amended, and the assurance by the CONTRACTOR pursuant thereto. The CONTRACTOR shall be financially responsible for the application of the conditions of Section 13(c).

Section 29. Other Labor Provisions. The CONTRACTOR shall be responsible for meeting the statutory and regulatory provisions of the "Contract Work Hours and Safety Standards Act", including, but not limited to meeting the statutory requirements of 40 U.S.C. 3701 et seq. and 40 U.S.C. 3141 et seq. as amended, as amended and regulations set forth at 29 CFR Parts 4, 5, 6 and 70 through 240, as amended for non-construction contracts of \$2,500 or more that involve the employment of mechanics or laborers. Pursuant to the requirements of 40 U.S.C. 3701 et seq., as amended 40 U.S.C. 3141 et seq. as amended and the regulations set forth at 29 CFR Parts 4, 5, 6 and 70 through 240, as amended, the following statements are made part of this Contract Agreement:

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

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b. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (b)(1) of 29 CFR Section 5.5, the CONTRACTOR and any subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages which shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b) (1) of 29 CFR, Section 5.5 in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5.

c. Withholding for Unpaid Wages and Liquidated Damages. USDOT or the recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any monies payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) (2) of 29 CFR, Section 5.5.

d. Non-construction Grants. The CONTRACTOR or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the recipient shall require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the CONTRACTOR or subcontractor for inspection, copying, or transcription by authorized representatives of USDOT and the Department of Labor, and the CONTRACTOR or subcontractor will permit such representatives to interview employees during working hours on the job.

e. Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs a. through e. of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs a. through e. of this paragraph.

Furthermore, the CONTRACTOR is responsible for providing Worker's Compensation for its employees.

Section 30. Environmental Regulation. The CONTRACTOR agrees (on projects with cost in excess of \$100,000) to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606, Section 508 of the Clean Water Act (33 U.S.C. 1368, Executive Order 11738 and Environmental Protection Agency regulations (40 CFR), and any amendments thereto. All violations shall be reported to the DEPARTMENT and to the U.S.E.P.A. Assistant Administrator for enforcement (EN-329).

Section 31. Energy Efficiency. The CONTRACTOR agrees to recognize mandatory standards and policies relating to energy efficiency which are contained in the State Energy

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Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163) and any amendments thereto.

Section 32. Settlement of Third Party Contract Disputes or Breaches. FTA has a vested interest in the settlement of disputes, defaults, or breaches involving Section 5310 federally assisted third party contracts. FTA retains a right to a proportionate share, based on the percentage of the federal share committed to the Project, of any proceeds derived from any third party recovery. Therefore, the CONTRACTOR shall avail itself of all legal rights available under any third party contract. The CONTRACTOR shall notify the DEPARTMENT of any current or prospective litigation pertaining to any third party contract. The DEPARTMENT and FTA reserves the right to concur in any compromise or settlement of the CONTRACTOR'S claim(s) involving any third party contract, before making Federal assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved unless the DEPARTMENT and FTA permit otherwise.

Section 33. Private Sector Participation. The CONTRACTOR agrees to abide by the private sector participation guidance contained in the FTA's private sector policy of October 22, 1984 and any amendments thereto, and the DEPARTMENT'S State Management Plan to ensure that private for-profit, private non-profit and other public agencies are provided reasonable notice to present their views concerning local plans, program and projects.

- a. The CONTRACTOR shall provide information necessary for the DEPARTMENT to make the required assurance to the FTA; and
- b. The CONTRACTOR must develop and implement a local private sector participation procedure that includes defined complaint procedures and is consistent with the requirements of the DEPARTMENT'S State Management Plan.

Section 34. Ethics. The CONTRACTOR shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts supported by Federal funds. Such code or standards shall provide that no employee, officer, or agent of the CONTRACTOR shall participate in the selection, or in the award, or in the administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:

- (a) the employee, officer, or agent;
- (b) any member of his or her immediate family;
- (c) his or her partner; or
- (d) an organization that employs, or is to employ, any of the above.

The code or standards shall also provide that the CONTRACTOR'S officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from subcontractors, potential subcontractors, or parties to the subcontracts. The CONTRACTOR may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State, Federal or local law, policies, rules and regulations, such code or standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such code or standards by the CONTRACTOR'S officers, employees, or agents, or by subcontractors or their agents.

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Section 35. Effective Date. The effective date of this Contract Agreement shall be the date identified in the period of performance as defined in Section 3 of this contract agreement.

Section 36. Bonding. Along with this contract, the applicant shall file with the DEPARTMENT a copy of its Fidelity Bond or a Certified Letter acknowledging that a Fidelity Bond is in effect covering the CONTRACTOR against the loss of money and securities or other properties in the amount of at least \$50,000, prior to the inception of this Contract Agreement.

Section 37. Certification Regarding Suspension and Debarment. The undersigned CONTRACTOR certifies herein and by Certification attached hereto as part of Exhibit A and incorporated herein by reference to the best of his or her knowledge and belief that its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Section 38. Certification Regarding Lobbying.

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned CONTRACTOR, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned CONTRACTOR shall complete and submit Standard Form-LLL. "Disclosure Form to Report Lobbying", in accordance with its instructions.

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- c. The undersigned CONTRACTOR shall require that the language of this certification be included in the contracts and/or agreements at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Section 39. Governing Law. This Contract Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflict of laws provisions, and any litigation with respect thereto shall be brought in a court of competent jurisdiction in Hinds County, State of Mississippi. CONTRACTOR expressly agrees that under no circumstances shall the DEPARTMENT be obligated to pay an attorney's fee for the cost of legal action to or on behalf of the CONTRACTOR.

Section 40. Program Fraud and False or Fraudulent Statements or Related Acts.

(a) The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U. S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of this Contract Agreement, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or cause to be made, pertaining to the contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

(b) The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the DEPARTMENT or the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307 as amended, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307 as amended on the Contractor, to the extent the Federal Government deems appropriate.

(c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Section 41. Federal Changes. CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR's failure to comply shall constitute a material breach of this contract.

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Section 42. Incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions include, in part, certain Standard Terms and conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, dated March 13, 2013 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any DEPARTMENT requests which would cause the CONTRACTOR to be in violation of the FTA terms and conditions.

Section 43. State and Local Law Disclaimer. Since many of the clauses which are suggested for use by the CONTRACTOR in its procurement documents are affected by both state and federal law requirements, the CONTRACTOR understands that it should consult with its attorney in order to assure appropriate legal guidance regarding the preparation and wording of any of the legal documents it enters pursuant to this Contract Agreement, including, but not limited to, its procurement documents.

Section 44. Substance Abuse. The CONTRACTOR agrees to comply with Federal Transit Administration regulations concerning substance abuse as follows:

- a. The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR, Parts 655, produce any documentation necessary to establish its compliance and permit any authorized representative of the Department of the USDOT or the DEPARTMENT to inspect the facilities and records associated with the implementation of the program as required under 49 CFR, 655.
- b. The CONTRACTOR further agrees to certify annually its compliance with 49 CFR 655 at such time and in such format as the DEPARTMENT may require.

Section 45. Certifications and Assurances. Certifications and Assurances executed by the CONTRACTOR are attached hereto as a part of Exhibit A (attached hereto and incorporated herein by reference and made a part hereof as if fully copied herein in words and figures).

Section 46. No Government Obligation to Third Parties. The CONTRACTOR acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in our approval of the solicitation or award of the underlying contract:

- a. Absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities of the CONTRACTOR pertaining to any matter resulting from the underlying contract.
- b. The CONTRACTOR agrees to include the above clause in each subcontract funded in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor.

Section 47. Buy America. The CONTRACTOR agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661 as amended, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

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General waivers are listed in 49 C.F.R. 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(c) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the CONTRACTOR the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

Section 48. Charter Service Operations. The CONTRACTOR agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604 as amended, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. 604.9. Any charter service provided under one of the exceptions must be "incidental," it must not interfere with or detract from the provision of mass transportation.

Section 49. School Bus Operations. Pursuant to 49 U.S.C. 5323(f) and 49 C.F.R. Part 605 as amended, recipients and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients may not use federally funded equipment, vehicles, or facilities.

Section 50. Recycled Products-Recovered Materials. The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 13693, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.


Section 51. Notification of Federal Participation. To the extent required by law, in the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the CONTRACTOR agrees to specify the amount of Federal assistance intended to be used to finance that acquisition and to express that amount of that Federal assistance as a percentage of the total cost of that third party contract.

Section 52. Entire Agreement. This contract constitutes the sole and entire Agreement between the DEPARTMENT and the CONTRACTOR with respect to the project hereof and supersedes any and all prior agreements, discussions and negotiations between the DEPARTMENT and the CONTRACTOR.

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IN WITNESS WHEREOF, this Contract Agreement has been executed by the DEPARTMENT, an agency of the State of Mississippi, and by the CONTRACTOR, and is the requisite authorization for the individuals executing this contract agreement to execute and bind the parties hereto.

City of Long Beach
2019-2020
5310 Contract Agreement #76-0016-19-804
DUNS # 025607524


Executive Director

10-2-19
Date

George Bass
Typed/Printed Name


Attest

10/2/19
Date

Stacey Dahl
Typed/Printed Name

MISSISSIPPI TRANSPORTATION COMMISSION

By the duly authorized Executive Director of the Mississippi Department of Transportation

Melinda L. McGrath, P.E.
Executive Director
Mississippi Department of Transportation
Book _____ Page _____

Date

Attest

Date

Typed/Printed Name

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EXHIBIT H

Vendor Name: City of Long Beach Contract # 76-0016-19-804

EEV CERTIFICATION AND AGREEMENT

By executing this Certification and Agreement, the undersigned verifies its compliance with Senate Bill 2988 from the 2008 Mississippi Legislative Session, "Mississippi Employment Protection Act," as published in Laws, 2008 and codified in the Mississippi Code of 1972, as amended, and any rules or regulations promulgated by Mississippi Transportation Commission, Department of Employment Security, State Tax Commission, Secretary of State and Department of Human Services in accordance with the Mississippi Administrative Procedures Law (Section 25-43-1 et seq., Mississippi Code of 1972, as amended), stating affirmatively that the individual, firm, or corporation which is contracting with MTC has registered with and is participating in a federal work authorization program* operated by the United States Department of Homeland Security to electronically verify information of newly hired employees pursuant to the Immigration Reform and Control Act of 1986, Pub.L. 99-603, 100 Stat 3359, as amended. The undersigned agrees to inform the MTC if the undersigned is no longer registered or participating in the program.

The undersigned agrees that, should it employ or contract with any subcontractor(s) verification of compliance with the Mississippi Employment Protection Act on the provided MDOT approved form. The undersigned further agrees to maintain records of such compliance and provide a copy of each such verification to MTC at the time such subcontractor(s) is retained for the benefit of the MTC or this Contract.

EEV* Company Identification Number [Required]

The undersigned certifies that the above information is complete, true and correct to the best of my knowledge and belief. The undersigned acknowledges that any violation may be subject to the cancellation of the contract, ineligibility for any state or public contract for up to three (3) years, the loss of any license, permit, certificate or other document granted by any agency, department or government entity for the right to do business in Mississippi for up to one (1) year, or both, any and all additional costs incurred because of the contract cancellation or the loss of any license or permit, and may be subject to additional felony prosecution for knowingly or recklessly accepting employment for compensation from an unauthorized alien as defined by 8 U.S.C §1324a(h)(3), said action punishable by imprisonment for not less than one (1) year nor more than five (5) years, a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or both, in addition to such prosecution and penalties as provided by Federal law.

BY *George L. Bass* 10/1/19
Authorized Officer or Agent Date
George L. Bass Mayor
Printed Name of Authorized Officer or Agent Title of Authorized Officer or Agent of Contractor

SWORN TO AND SUBSCRIBED before me on this the 1 day of Oct, 2019.
Stacey Dahl
NOTARY PUBLIC
My Commission Expires: 12/5/19

*As of the effective date of the Mississippi Employment Protection Act, the applicable federal work authorization program is E-Verify™ operated by the U.S. Citizenship and Immigration Services of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration.



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Attachment A

CHANGE OF INFORMATION FORM

MDOT is updating the Sub-recipient information on file. Please complete the form below and email or fax the updated information to Pam West at (Email) pwest@mdot.ms.gov or (Fax) 601-359-7777.

Company Name City of Long Beach

Company Address P.O. Box 929 Long Beach MS 39560

Name and Title of Office Personnel Kini Gonsoulin, Finance Officer

Type of Service Municipality

Hours of Service Monday - Friday 8am - 5pm

Phone Number 228-863-1556

Fax Number 228-865-0822

Email Address Kini@cityoflongbeach.ms.com

Counties Served Harrison

***Please review the Transit Providers Map on the MDOT website. If any changes are needed, add the correct information to this form.

Alderman Lishen made motion seconded by Alderman McCaffrey and unanimously carried to approve the following letter to be distributed by the Building Official to residents that may be prone to flooding:

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Mayor and Board of Aldermen

City of Long Beach

BOARD OF ALDERMEN

Donald Frazer - At-Large
 Ronald Robertson - Ward 1
 Bernie Parker - Ward 2
 Kelly Griffin - Ward 3
 Timothy McCaffrey, Jr. - Ward 4
 Mark E. Lishen - Ward 5
 Patricia Bennett - Ward 6



GEORGE L. BASS
MAYOR

CITY CLERK
 TAX COLLECTOR
 Stacey Dahl

CITY ATTORNEY
 James C. Simpson, Jr.

October 4, 2019

Dear Resident:

You have received this letter because your property is in an area that has been flooded several times. Our community is concerned about repetitive flooding and has an active program to help you protect yourself and your property from future flooding, but here are some things you can do:

1. Check with the Building Department on the extent of past flooding in your area. Department staff can tell you about the causes of repetitive flooding, what the City is doing about it, and what would be an appropriate flood protection level. The staff can visit your property to discuss flood protection alternatives.
2. Prepare for flooding by doing the following:
 - Know how to shut off the electricity and gas to your house when a flood comes.
 - Make a list of emergency numbers and identify a safe place to go.
 - Make a household inventory, especially of basement contents.
 - Put insurance policies, valuable papers, medicine, etc., in a safe place.
 - Collect and put cleaning supplies, camera, waterproof boots, etc., in a handy place.
 - Develop a disaster response plan. See the Red Cross' website at www.redcross.org for information about preparing your home and family for a disaster.
 - Get a copy of *Repairing Your Flooded Home*. It can be found on the Red Cross website.
3. Consider some permanent flood protection measures.
 - Mark your fuse or breaker box to show the circuits to the floodable areas. Turning off the power to the basement before a flood can reduce property damage and save lives.
 - Consider elevating your house above flood levels.
 - Check your building for water entry points, such as basement windows, the basement stairwell, doors, and dryer vents. These can be protected with low walls or temporary shields.
 - Install a floor drain plug, standpipe, overhead sewer, or sewer backup valve to prevent sewer backup flooding.
 - More information can be found at FEMA's website, www.ready.gov/floods.
 - Note that some flood protection measures may need a building permit and others may not be safe for your type of building, so be sure to talk to the Building Department.
4. Talk to the Building Department for information on financial assistance.
 - Get a flood insurance policy – it will help pay for repairs after a flood and, in some cases, it will help pay the costs of elevating a substantially damaged building.
5. Get a Flood Insurance Policy.
 - Homeowner's insurance policies do not cover damage from floods. However, because our community participates in the National Flood Insurance Program, you can purchase a separate flood insurance policy. This insurance is backed by the Federal government and is available to everyone, even properties that have been flooded. Because our community participates in the Community Rating System, you will receive a reduction in the insurance premium.
 - Because your area is not mapped as a Special Flood Hazard Area, you may qualify for a lower-cost Preferred Risk Policy.
 - Some people have purchased flood insurance because it was required by the bank when they got a mortgage or home improvement loan. Usually these policies just cover the building's structure and not the contents. During the kind of flooding that happens in your area, there is usually more damage to the furniture and contents than there is to the structure. Be sure you have contents coverage.
 - Don't wait for the next flood to buy insurance protection. In most cases, there is a 30-day waiting period before National Flood Insurance Program coverage takes effect.
 - Contact your insurance agent for more information on rates and coverage.

Sincerely,

Mike Gundlach
 Building Inspector
 City of Long Beach

*

*

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Mayor and Board of Aldermen**

Alderman Parker requested an update on the City's Community Rating System (CRS) score. Building Official Mike Gundlach informed the Board that the City was currently at an 8, but he is taking measures to get it lowered to a 7.

Alderman Frazer made motion seconded by Alderman McCaffrey and unanimously carried to approve the following grant agreement with the U.S. Department of Agriculture for Drainage Work on the Canals from Espy to 28th Street and the following Memorandum of Understanding with the Long Beach Water Management District and authorize the Mayor to execute same:

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U.S. Department of Agriculture
Natural Resources Conservation Service

NRCS-ADS-093


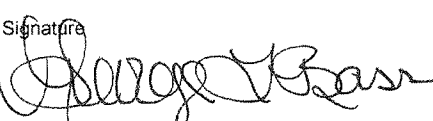
NOTICE OF GRANT AND AGREEMENT AWARD

1. Award Identifying Number NR194423XXXXC092	2. Amendment Number	3. Award /Project Period NRCS signature - 03/01/2020	4. Type of award instrument: Cooperative Agreement
5. Agency (Name and Address) Natural Resources Conservation Service 100 West Capitol Street, Suite 1321 Jackson, MS 39269		6. Recipient Organization (Name and Address) LONG BEACH CITY OF P.O. BOX 929 LONG BEACH MS 39560-0929 DUNS: 025607524 EIN:	
7. NRCS Program Contact Name: Norman Patterson Phone: (601) 909-3305 Email: norman.patterson@ms.usda.gov	8. NRCS Administrative Contact Name: MOIRA SANFORD Phone: (614) 255-2495 Email: MOIRA.SANFORD@OH.USDA.GOV	9. Recipient Program Contact Name: David Ball Phone: (228) 967-7137 Email: david@overstreeteng.com	10. Recipient Administrative Contact Name: George L. Bass Phone: (228) 863-1556 Email: mayor@cityoflongbeachms.com
11. CFDA 10.923	12. Authority 33 U.S.C. 701b-1	13. Type of Action New Agreement	14. Program Director Name: David Ball Phone: (228) 967-7137 Email: david@overstreeteng.com
15. Project Title/ Description: EWP, Long Beach Espy, Harrison Co, Back Bay of Biloxi-Biloxi Bay, Project 5284 (6000011510)			
16. Entity Type: C = City or township Government			
17. Select Funding Type			
Select funding type:	<input checked="" type="checkbox"/> Federal	<input checked="" type="checkbox"/> Non-Federal	
Original funds total	\$284,625.00	\$86,250.00	
Additional funds total	\$0.00	\$0.00	
Grand total	\$284,625.00	\$86,250.00	
18. Approved Budget			

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Personnel	\$0.00	Fringe Benefits	\$0.00
Travel	\$0.00	Equipment	\$0.00
Supplies	\$0.00	Contractual	\$0.00
Construction	\$258,750.00	Other	\$25,875.00
Total Direct Cost	\$284,625.00	Total Indirect Cost	\$0.00
		Total Non-Federal Funds	\$86,250.00
		Total Federal Funds Awarded	\$284,625.00
		Total Approved Budget	\$370,875.00

This agreement is subject to applicable USDA NRCS statutory provisions and Financial Assistance Regulations. In accepting this award or amendment and any payments made pursuant thereto, the undersigned represents that he or she is duly authorized to act on behalf of the awardee organization, agrees that the award is subject to the applicable provisions of this agreement (and all attachments), and agrees that acceptance of any payments constitutes an agreement by the payee that the amounts, if any, found by NRCS to have been overpaid, will be refunded or credited in full to NRCS.

Name and Title of Authorized Government Representative KURT READUS STATE CONSERVATIONIST	Signature 	Date
Name and Title of Authorized Recipient Representative GEORGE BASS MAYOR, CITY OF LONG BEACH	Signature 	Date 9-26-19

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. Section 522a).

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Statement of Work

Purpose

The purpose of this agreement is for the United States Department of Agriculture, Natural Resources Conservation Service, hereinafter referred to as the "NRCS", to provide technical and financial assistance to City of Long Beach, hereinafter referred to as the "Sponsor", for EWP Project # 5284 in The City of Long Beach in Harrison County, Mississippi for implementation of recovery measures, that, if left undone, pose a risk to life and/or property.

Objectives

The design and installation of EWP measures as detailed in the individual Damage Survey Report (DSR) and described here:

- Espy Avenue to 28th St-- Implement debris and sediment removal measures - \$345,000.00

Budget Narrative

A. The estimated costs for the Project:

1. Total Estimated Project Budget: \$370,875.00

The budget includes:

Financial Assistance (FA) Costs:

Construction Costs (75% NRCS \$258,750 + 25% Sponsor \$86,250): \$345,000

Technical Assistance (TA) Costs:

100% NRCS (7.5% of total construction cost): \$25,875.00

2. NRCS pays up to 75 percent of eligible construction costs, and Sponsor pays 25 percent of construction costs. NRCS will contribute up to 7.5 percent of the total construction cost for contract administration and construction management costs. It is possible that technical and administrative costs will exceed this amount, requiring the Sponsor to contribute resources to complete technical and administrative work.

3. NRCS funding for this project is provided to the Sponsor in two separate NRCS funding accounts, one for financial assistance (FA) and one for technical assistance (TA). FA costs are associated with construction activities; TA costs are associated with services. These expenditures shall be accounted for separately in order for expenses to be eligible for reimbursement.

4. NRCS will provide FA for actual costs as reimbursement to the Sponsor for approved on-the-ground construction costs, subject to above limits. If costs are reduced, reimbursement will be reduced accordingly. Construction costs are associated with the installation of the project measures including labor, equipment and materials.

5. NRCS will provide TA reimbursement to the Sponsor for technical and administrative costs directly charged to the project, subject to the above limits. If costs are reduced, reimbursement will be reduced accordingly. These costs include

a. engineering costs include, but not limited to, developing a project design that includes construction drawings and specifications, an operation and maintenance plan, a quality assurance/inspection plan and an engineer's estimate of the project installation costs in addition to providing necessary quality assurance during construction.

b. contract administration costs include, but not limited to, soliciting, evaluating, awarding and administering contracts for construction and engineering services, including project management, verifying invoices and record keeping.

6. The Sponsor will contribute funds toward the total construction costs in either direct cash expenditures, the value of non-cash materials or services, or in-kind contributions. The value of any in-kind contribution shall be agreed to in writing prior to implementation.

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Responsibilities of the Parties:

A. Sponsor will—

1. Accomplish construction of the EWP project measures by contracting, in-kind construction services, or a combination of both.
2. Ensure and certify by signing this agreement that its cost share obligation is from a non-Federal source.
3. Designate a project liaison to serve between the Sponsor and NRCS and identify that person's contact information with this executed agreement. Any change in the project liaison during the terms of this agreement must be immediately communicated to NRCS.
4. Appoint a contracting officer and an authorized representative who will have authority to act for the contracting officer, listing their duties, responsibilities, and authorities. Furnish such information in writing to the NRCS State Conservationist.
5. Comply with the terms and conditions of this agreement and the attached general terms and conditions except those that are not applicable to State and local governments.
6. Acquire and provide certification to NRCS that real property rights (land and water), permits and licenses in accordance with local, state, and Federal laws necessary for the installation of EWP project measures have been obtained at no cost to NRCS prior to construction. This includes any rights associated with required environmental mitigation. Sponsors shall provide such certification on Form NRCS-ADS-78, Assurances Relating to Real Property Acquisition. Sponsors shall also provide an attorney's opinion supporting this certification. Costs related to land rights and permits are the Sponsor's responsibility and ineligible for reimbursement.
7. Accept all financial and other responsibility for excess costs resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits and licenses needed for the Project.
8. Provide the agreed-to portion of the actual, eligible and approved construction cost. These costs may be in the form of cash, in-kind construction services, or a combination of both. Final construction items that are eligible construction costs will be agreed upon during the pre-design conference. These costs consist of costs from contracts awarded to contractors and eligible Sponsor in-kind construction costs for materials, labor, and equipment. The Sponsor shall provide NRCS documentation to support all eligible construction costs. Construction costs incurred prior to the Sponsor and NRCS signing this agreement are ineligible and will not be reimbursed.
9. Be responsible for 100 percent of all ineligible construction costs and 100 percent of any unapproved upgrade to increase the level of protection over and above that described in the DSR.
10. Account for and report FA and TA expenditures separately in order for expenses to be eligible for reimbursement. NRCS funding for this project is provided to the Sponsor in two separate NRCS funding accounts, one for TA and one for FA, requiring this separation.
11. Prepare design, construction specifications, and drawings in accordance with standard engineering principles that comply with NRCS programmatic requirements; and/or contract/install the designed construction. Any design services will be by a professional registered engineer. Sponsor will obtain NRCS review and concurrence on the design, construction plans, and specifications. The Sponsor must ensure description of work is reviewed, concurred, and approved by NRCS. A copy of the final signed and sealed plans and specifications shall be provided to NRCS.
12. Contract for services and construction in accordance with the Code of Federal Regulations (CFR), 2 CFR § 200.317 through 200.326, applicable State regulations, and the Sponsor's procurement regulations, as appropriate. (See general terms and conditions attached to this agreement for a link to the CFR.) In accordance with 2 CFR § 200.326, contracts must contain the applicable provisions described in Appendix II to Part 200. Davis-Bacon Act would not apply under this Federal program legislation.
13. The contracts for design services and construction described in this Agreement shall not be awarded to the Sponsor or to any firm in which any Sponsor's official or any member of such official's immediate family has direct or indirect interest in the pecuniary profits or contracts of such firms. Reference 2 CFR § 200.318 regarding standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts.
14. For contracts, provide NRCS a copy of solicitation notice, bid abstract, and notice of contract award, or other basis of

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cost and accomplishment.

15. For in-kind construction services (materials, labor, and/or equipment supplied by the Sponsor), develop a Plan of Operations describing the construction services to be performed including estimated quantities and values. The Plan of Operations shall be concurred in by NRCS at the pre-design conference. In-kind construction services for equipment shall not exceed published FEMA equipment rates unless otherwise documented and concurred in advance by NRCS.

16. The following documentation is required to support the Sponsor's request for reimbursement of in-kind construction services:

- a. Invoices covering actual costs of materials used in constructing the eligible EWP project measures.
- b. Records documenting the type, quality, and quantities of materials actually used in constructing the eligible EWP project measures.
- c. Daily time records for each employee showing name, classification, wage rate, hours, and dates actually employed for constructing the eligible EWP project measures.
- d. Equipment operating records showing the type and size of equipment, hourly rate, actual hours of operation and dates used to install the eligible EWP project measures. Equipment idle time is not eligible in-kind construction services, even if on the job site, and should not be included in the equipment operating records.

17. Prior to commencement of work and/or solicitation of bids, submit for NRCS review and concurrence a Quality Assurance Plan (QAP). The QAP shall outline technical and administrative expertise required to ensure the EWP project measures are installed in accordance with the plans and specifications, identify individuals with the expertise, describe items to be inspected, list equipment required for inspection, outline the frequency and timing of inspection (continuous or periodic), outline inspection procedures, and record keeping requirements. A copy of the final QAP shall be provided to NRCS prior to commencement of construction.

18. Provide construction inspection in accordance with the QAP.

19. Prepare and submit for NRCS concurrence an Operation and Maintenance (O&M) Plan, if applicable, prior to commence of work. The O&M Plan shall describe the activities the Sponsor will do to ensure the project performs as designed. Upon completion of the project measures, the Sponsor shall assume responsibility for O&M.

20. Provide copies of site maps to appropriate Federal and State agencies for environmental review. Sponsor will notify NRCS of environmental clearance, modification of construction plans, or any unresolved concerns as well as copies of all permits, licenses, and other documents required by Federal, state, and local statutes and ordinances prior to solicitation for installation of the EWP project measures. All modifications to the plans and specifications shall be reviewed and concurred on by NRCS.

21. Ensure that any special requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.

22. The Sponsor must secure at its own expense all Federal, State, and local permits and licenses necessary for completion of the work described in this agreement as well as any necessary natural resource rights and provide copies of all permits and licenses obtained to NRCS.

23. Will arrange and pay for any necessary location, removal, or relocation of utilities. EWP program regulations prohibit NRCS from reimbursing the Sponsor or otherwise paying for any such costs; nor do the costs qualify as a Sponsor cost-share contribution.

24. Ensure that technical and engineering standards and specifications of NRCS are adhered to during construction of the Project, as interpreted by NRCS Program/Technical Contact. Provide NRCS Program/Technical Contact progress reports as necessary and agreed to. Progress reports should include technical on-site inspections of work accomplished for the period, work planned, results of material tests, deficient work products and/or tests with corrective actions taken, modifications anticipated, technical problems encountered, contractual issues and other relevant information.

25. Ensure that all contractors on NRCS assisted projects are performing their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 USC 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). The Sponsor is responsible for periodically checking the contractor's compliance with safety requirements.

26. Arrange for and conduct final inspection of completed project with NRCS to determine whether all work has been performed in accordance with contractual requirements. Provide a PE certification that the Project was installed in accordance with approved plans and specifications.

27. Provide PE-certified as-built drawings and quantities for the project. A copy of the as-built drawings will be

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submitted to the NRCS Program/Technical Contact.

28. Pay the contractor(s) for work performed in accordance with the agreement and submit a SF-270, "Request for Advance or Reimbursement" to the NRCS Program/Technical Contact with all documentation to support the request. Final payment request shall be submitted within 90 calendar days of completion of the EWP project measures. Payments will be withheld until all required documentation is submitted and complete.

a. The required supporting documentation for reimbursement of construction costs include invoices and proof of payment to the contractor showing the items and quantities installed and certified by the engineer of record along with any supporting documentation such as quantity calculations, rock weight tickets, etc.

b. The required supporting documentation for reimbursement of in-kind construction expenses will include employee time sheets, employee hourly rate, equipment operating logs, equipment hourly rate, and material quantities and invoices.

c. The required documentation for reimbursement of technical and administrative services will be invoices and proof of payment to consultants and/or employee time sheets along with the employee's hourly rate, hours worked, and date work was performed.

29. Ensure that information in the System for Award Management (SAM) is current and accurate until the final financial report (SF-425) under this award or final payment is received, whichever is later.

30. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract(s) awarded under this Agreement. This includes, but is not limited to disputes, claims, protests of award, source evaluation, and litigation that may result from the Project. Such actions will be at the expense of the Sponsor, including any legal expenses. The Sponsor will advise, consult with, and obtain prior written concurrence of NRCS on any litigation matters in which NRCS could have a financial interest.

31. Sponsor must indemnify and hold NRCS harmless to the extent permitted by State law for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the Sponsor in connection with its acquisition and management of the Emergency Watershed Protection Program pursuant to this agreement. Further, the Sponsor agrees that NRCS will have no responsibility for acts and omissions of the Sponsor, its agents, successors, assigns, employees, contractors, or lessees in connection with the acquisition and management of the Emergency Watershed Protection Program pursuant to this agreement that result in violation of any laws and regulations that are now or that may in the future become applicable.

32. Retain all records dealing with the award and administration of the contract(s) for 3 years from the date of the Sponsor's submission of the final request for reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the 3-year period, records are to be retained until the litigation is resolved or the end of the 3-year period, whichever is longer. Make such records available to the Comptroller General of the United States or his or her duly authorized representative and accredited representatives of the Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcriptions.

33. Be liable to the NRCS for damages sustained by the NRCS as a result of the contractor failing to complete the work within the specified time. The damages will be based upon the additional costs incurred by the NRCS resulting from the contractor not completing the work within the allowable performance period. These costs include but are not limited to personnel costs, travel, etc. The NRCS will have the right to withhold such amount out of any monies that may be then due or that may become due and payable to the Sponsor. This liability is not applicable to the extent that the contract performance time is extended by court judgment unless such judgment results from actions of the Sponsor not concurred in by NRCS.

34. Take necessary legal action, including bringing suit, to collect from the contractor any monies due in connection with the contract, or upon request of NRCS, assign and transfer to NRCS any or all claims, demands, and causes of action of every kind whatsoever that the Sponsor has against the contractor or his or her sureties.

B. NRCS will—

1. Assist Sponsor in establishing design parameters; determine eligible construction costs during the pre-design conference.

2. Designate a Government representative (GR) to serve as liaison with the Sponsor and identify that person's contact information with this executed agreement.

3. Review, comment and concur in preliminary and final plans, specifications, O&M Plan, Plan of Operations (if required) and QAP.

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4. Make periodic site visits during the installation of the EWP project measures to review construction progress, document conformance to engineering plans and specifications, and provide any necessary clarification on the Sponsor's responsibilities.
5. Upon notification of the completion of the EWP project measures, NRCS shall promptly review the performance of the Sponsor to determine if the requirements of this agreement and fund expenditures as agreed have been met.
6. Make payment to the Sponsor covering NRCS' share of the cost upon receipt and approval of Form SF-270 and supporting documentation, withholding the amount of damages sustained by NRCS as provided for in this agreement. In the event there are questions regarding the SF 270 and supporting documentation, NRCS will contact the Sponsor in a timely manner to resolve concerns.

SPECIAL PROVISIONS

- A. The furnishing of financial, administrative, and/or technical assistance above the original funding amount by NRCS is contingent on there being sufficient unobligated and uncommitted funding in the Emergency Watershed Protection Program that is available for obligation in the year in which the assistance will be provided. NRCS may not make commitments in excess of funds authorized by law or made administratively available. Congress may impose obligational limits on program funding that constrains NRCS's ability to provide such assistance.
- B. In the event of default of a construction contract awarded pursuant to this agreement, any additional funds properly allocable as construction costs required to ensure completion of the job are to be provided in the same ratio as construction funds are contributed by the parties under the terms of this agreement. Any excess costs including interest resulting from a judgment collected from the defaulting contractor, or his or her surety, will be prorated between the Sponsor and NRCS in the same ratio as construction funds are contributed under the terms of the agreement.
- C. Additional funds, including interest properly allocable as construction costs as determined by NRCS, required as a result of decision of the CO or a court judgment in favor of a claimant will be provided in the same ratio as construction funds are contributed under the terms of this agreement. NRCS will not be obligated to contribute funds under any agreement or commitment made by the Sponsor without prior concurrence of NRCS.
- D. The State Conservationist may make adjustments in the estimated cost to NRCS set forth in this agreement for constructing the EWP measures. Such adjustments may increase or decrease the amount of estimated funds that are related to differences between such estimated cost and the amount of the awarded contract or to changes, differing site conditions, quantity variations, or other actions taken under the provisions of the contract. No adjustment will be made to change the cost sharing assistance provided by NRCS as set forth in this agreement, nor reduce funds below the amount required to carry out NRCS' share of the contract.
- E. Except for item D. above, this document may be revised as mutually agreed through a written amendment duly executed by authorized officials of all signatory parties to this agreement.
- F. NRCS, at its sole discretion, may refuse to cost share should the Sponsor, in administering the contract, elect to proceed without obtaining concurrence as set out in this agreement.
- G. Once the project is completed and all requests for reimbursement submitted, any excess funding remaining in the agreement will be de-obligated from the agreement.
- H. If inconsistencies arise between the language in the Statement of Work (SOW) in the agreement and the general terms and conditions, the language in the SOW takes precedence.

Expected Accomplishments and Deliverables

The following accomplishments and deliverable will be provided to NRCS.

1. One copy of the final engineering plans, specifications signed and sealed by a licensed professional engineer, including engineer's cost estimate, and approved Plan of Operations (if applicable).
2. Signed NRCS-ADS-78 supported by an attorney's opinion.
3. One copy of the quality assurance plan.
4. One copy of the operation and maintenance plan.
5. One copy of the notice of solicitation, bid abstract, and notice of award.
6. Certification that the project was installed in accordance with the plans and specifications.
7. As-built drawings of final construction sign by a licensed professional engineer within 30 days of completion of construction.
8. Quantities of the units of work applied for each site within 30 days of completion of construction.

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Resources Required

No resources, other than funding, are required.

Milestones

Milestones shall include, but not limited to, the following items:

1. Pre-construction design conference within 30 days of signing agreement.
2. Submit to NRCS a schedule with time lines of major items to be completed within 14 days of the pre-design conference.
3. Acquire needed real property rights and permits (signed NRCS-ADS-78 supported by an attorney's opinion) prior to start of construction.
4. Obtaining permits.
5. Completing any necessary surveys.
6. Completing draft engineering plans and specifications for NRCS review.
7. Completing final engineering plans and specifications.
8. Completing quality assurance plan.
9. Solicit bids.
10. Award contract.

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GENERAL TERMS AND CONDITIONS

Please reference the below link(s) for the General Terms and Conditions pertaining to this award:

NATURAL RESOURCES CONSERVATION SERVICE U.S. DEPARTMENT OF AGRICULTURE

GENERAL TERMS AND CONDITIONS GRANTS AND COOPERATIVE AGREEMENTS

I. APPLICABLE REGULATIONS

a. The recipient, and recipients of any subawards under this award, agree to comply with the following regulations, as applicable. The full text of Code of Federal Regulations references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov/>.

(1) 2 CFR Part 25, "Universal Identifier and System of Award Management" (2) 2 CFR Part 170, "Reporting Subaward and Executive Compensation Information" (3) 2 CFR Part 180, "OMB Guidelines To Agencies On Governmentwide Debarment And Suspension (Nonprocurement)" (4) 2 CFR Part 182, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)" (5) 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards"

b. The recipient, and recipients of any subawards under this award, assure and certify that they have and/or will comply with the following regulations, as applicable. The full text of Code of Federal Regulations references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov/>.

(1) 2 CFR Part 175, "Award Term for Trafficking in Persons" (2) 2 CFR Part 417, "Nonprocurement Debarment and Suspension" (3) 2 CFR Part 418, "New Restrictions on Lobbying" (4) 2 CFR Part 421, "Requirements for Drug-Free Workplace (Financial Assistance)"

c. Allowable project costs will be determined in accordance with the authorizing statute, the purpose of the award, and to the extent applicable to the type of organizations receiving the award, regardless of tier. The following portions of the Code of Federal Regulations are hereby incorporated by reference. The full text of Code of Federal Regulations references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov/>.

(1) 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles And Audit Requirements For Federal Awards" (2) 48 CFR Part 31, "Contract Cost Principles and Procedures"

II. UNALLOWABLE COSTS

The following costs are not allowed:

a. Costs above the amount authorized for the project b. Costs incurred after the expiration of the award including any no-cost extensions of time c. Costs that lie outside the scope of the approved project and any amendments thereto d. Compensation for injuries to persons or damage to property arising from project activities

This list is not exhaustive. For general information about the allowability of particular items of costs, please see 2 CFR Part 200, "Subpart E – Cost Principles", or direct specific inquiries to the NRCS administrative contact identified in the award.

III. CONFIDENTIALITY

a. Activities performed under this award may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term "confidential information" means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of NRCS.

b. The recipient's personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The recipient's personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171).

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c. The recipient agrees to comply with NRCS guidelines and requirements regarding the disclosure of information protected under Section 1619 of the Food, Conservation, and Energy Act of 2008 (PL 110-246), U.S.C. 8791.

d. The recipient agrees to comply with the "Prohibition Against Certain Internal Confidentiality Agreements:"

1. You may not require your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. 2. You must notify your employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (1) of this award provision are no longer in effect. 3. The prohibition in paragraph (1) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information. 4. If NRCS determines that you are not in compliance with this award provision, NRCS: a. Will prohibit your use of funds under this award, in accordance with sections 743 and 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law; b. May pursue other remedies available for your material failure to comply with award terms and conditions.

IV. PRIOR APPROVAL REQUIREMENTS

The following are the most common situations requiring prior approval. However, the recipient is also bound by any other prior approval requirements of the applicable administrative provisions and Federal cost principles.

a. Purpose or Deliverables.—When it is necessary for the recipient to modify the purpose or deliverables, the recipient must submit a written request and justification for the change along with the revised purpose or deliverables of the award to the NRCS administrative contact. The request should contain the following: 1. Grant or agreement number 2. Narrative explaining the requested modification to the project purpose or deliverables 3. A description of the revised purpose or deliverables 4. Signatures of the authorized representative, project director, or both

b. Subaward/contractual Arrangement.—The recipient must submit a justification for the proposed subaward/contractual arrangements, a statement of work to be performed, and a detailed budget for the subaward/contract to the NRCS administrative contact. Subaward/contractual arrangements disclosed in the application do not require additional postaward approval.

c. Absence or Change in Project Leadership.—When a project director or the person responsible for the direction or management of the project—

1. Relinquishes active direction of the project for more than 3 consecutive months or has a 25 percent or more reduction in time devoted to the project, the grantee must notify the NRCS administrative contact in writing, identifying who will be in charge during the project director's absence. The notification must include the qualifications and the signature of the replacement, signifying his or her willingness to serve on the project.

2. Severs his or her affiliation with the grantee, the grantee's options include— i. Replacing the project director. The grantee must request written approval of the replacement from the NRCS administrative contact and must include the qualifications and the signature of the replacement signifying his or her willingness to serve on the project. ii. Subcontracting to the former project director's new organization. The grantee must request approval from the administrative contact to replace the project manager and retain the award, and to subcontract to the former project director's new organization certain portions of the project to be completed by the former project director. iii. Relinquishing the award. The grantee must submit to the NRCS administrative contact a signed letter by the grantee and the project director that indicates that the grantee is relinquishing the award. The letter must include the date the project director is leaving and a summary of progress to date. A final Standard Form (SF) 425 reflecting the total amount of funds spent by the recipient must be attached to the letter.

3. Transfers the award to his or her new organization, the authorized organization's representative at the new organization must submit the following to the NRCS administrative contact as soon as the transfer date is firm and the amount of funds to be transferred is known: i. The forms and certifications included in the application package ii. A project summary and work statement covering the work to be completed under the project (deliverables and objectives must be the same as those outlined in the approved proposal) iii. An updated qualifications statement for the project director showing his or her new organizational affiliation iv. Any cost-sharing requirements under the original award transfer to the new institution; therefore, cost-sharing information must be included in the proposal from the new organization

Note: The transfer of an award from one organization to another can take up to 90 calendar days to accomplish, which may result in a delay in the project director resuming the project at the new organization.

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d. Budget Revisions.—Budget revisions will be in accordance with 2 CFR Part 200.308.

e. No-Cost Extensions of Time.—When a no-cost extension of time is required, the recipient must submit a written request to the NRCS administrative contact no later than 30 calendar days before the expiration date of the award. The request must contain the following: The length of additional time required to complete the project and a justification for the extension. A summary of progress to date. An estimate of funds expected to remain unobligated on the scheduled expiration date. A projected timetable to complete the portions of the project for which the extension is being requested. Signature of the grantee and the project director. A status of cost sharing to date (if applicable).

Note: An extension will not exceed 12 months. Requests for no-cost extensions received after the expiration of the award will not be granted. V. PAYMENTS

a. Payment by NRCS to the entity will be made monthly or quarterly (whichever is mutually agreed upon by both parties) on a reimbursable or advanced basis upon completion of work outlined herein. Payment will be executed upon the submission of a properly executed form SF-270 with supporting documentation. The SF-270 must cite the agreement number, remittance address, and billing period. The SF-270 must be sent to the NRCS administrative contact at the email address identified in block 8 of the Notice of Grant/Agreement Award.

b. Unless otherwise specified in the award, the recipient must receive payments through electronic funds transfers.

c. Recipients requesting advances should request payments in amounts necessary to meet their current needs pursuant to procedures contained in the Federal administrative provisions and 31 CFR Part 205.

d. The method of payment between the recipient and its contractors will be in accordance with the policies and procedures established by the recipient except that the contractors may not use the USDA Office of Financial Management/National Finance Center method to request payments. If the grantee makes advance payments to contractors, the grantee must ensure that the timing of such payments is designed to minimize elapsed time between the advance payment and the disbursement of funds. Payment requests from the grantee's contractors will not be sent to NRCS for review or approval.

e. Accounting records for all costs incurred under this award must be supported by source documentation. Such documentation includes, but is not limited to, canceled checks, paid bills, payroll records, and subaward documents. Labor cost charges to this award must be based upon salaries actually earned and the time actually worked on this award. All project costs must be incurred within the approved project period of this award, including any approved no-cost extension of time. Costs that cannot be supported by source documentation or that are incurred outside of the approved project period and budget may be disallowed and may result in award funds being returned to the Federal Government by the recipient.

VI. ACCRUALS

a. Recipients must submit an accrual estimate to the NRCS Program/Technical no later than 15 calendar days prior to the end of the quarter (submit by March 15, June 15, September 15 and December 15th). b. An accrual represents the value of goods or services provided to NRCS for which you have not requested payment. The quality and completeness of NRCS audited financial statements depends on your continuing cooperation and timely information. c. At a minimum, the signed accrual statement should include, "Under agreement number _____, at the close of the quarter ending _____, we have provided or anticipate providing goods or services that we have not requested payment for in the amount of \$_____." Include the name and title of the person preparing the accrual estimate.

VII. FINANCIAL REPORTING

a. Recipients must submit a Federal Financial Report (FFR), SF 425 and 425A, in accordance with the following schedule:

Quarterly Schedule Report Due Date October 1 to December 31 January 31 January 1 to March 31 April 30 April 1 to June 30 July 31 July 1 to September 30 October 31

Reports must be submitted on an accrual accounting basis. Failure to submit reports in accordance with the above schedule may result in suspension or termination of award.

b. A final Report must be submitted no later than 90 calendar days after the completion of the award. For final FFRs, reporting end date must be the end date of the project or agreement period. The reports should be submitted to the NRCS administrative contact identified in award notifications.

VIII. PERFORMANCE MONITORING AND REPORTING

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a. The recipient is responsible for monitoring day-to-day performance and for reporting to NRCS. If the project involves subaward arrangements, the recipient is also responsible for monitoring the performance of project activities under those arrangements to ensure that approved goals and schedules are met.

b. Every 6 months the recipient must submit a written progress report. Each report must cover— 1. A comparison of actual accomplishments with the goals and objectives established for the reporting period and, where project output can be quantified, a computation of the costs per unit of output.

2. The reasons why goals and objectives were not met, if appropriate.

3. Additional pertinent information including, where appropriate, analysis and explanation of cost overruns or high unit cost.

c. The recipient must submit a final performance report within 90 calendar days after completion of project.

IX. AUDIT REQUIREMENTS

The recipient is responsible for complying with audit requirements in accordance with 2 CFR 200, Subpart F. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year.

X. SPECIAL PROVISIONS

a. The recipient assures and certifies that it will comply with the minimum-wage and maximum-hour provisions of the Federal Fair Labor Standards Act.

b. Employees of NRCS will participate in efforts under this agreement solely as representatives of the United States. To this end, they may not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of the recipient. They also may not assist the recipient with efforts to lobby Congress or to raise money through fundraising efforts. Further, NRCS employees must report to their immediate supervisor any negotiations with the recipient concerning future employment and must refrain from participation in efforts regarding such parties until approved by the agency.

c. Employees of the recipient will not be considered Federal employees or agents of the United States for any purposes under this agreement.

XI. PATENTS, INVENTIONS, COPYRIGHTS, AND ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER

a. Allocation of rights of patents, inventions, and copyrights must be in accordance with 2 CFR Part 200.315. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support.

b. In accordance with 37 CFR Section 401.14, each subject invention must be disclosed to the Federal agency within 2 months after the inventor discloses it in writing to contractor personnel responsible for patent matters. Invention disclosure statements pursuant to 37 CFR Section 401.14(c) must be made in writing to:

Acquisitions Division Grants and Agreements Services Branch 1400 Independence Avenue, SW, Room 6823 South Building Washington, DC 20250

c. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must manufacture it domestically.

d. The following acknowledgment of NRCS support must appear in the publication of any material, whether copyrighted or not, and any products in electronic formats (World Wide Web pages, computer programs, etc.) that is substantially based upon or developed under this award:

• "This material is based upon work supported by the Natural Resources Conservation Service, U.S. Department of Agriculture, under number [recipient should enter the applicable award number here]."

In addition, all publications and other materials, except scientific articles or papers published in scientific journals, must include the following statement:

• "Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Agriculture."

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e. All publications printed with Federal Government funds will include the most current USDA nondiscrimination statement, available from the Public Affairs Division, Civil Rights Division, or on the USDA and NRCS home pages. If the material is too small to permit the full nondiscrimination statement to be included, the material must, at a minimum, include the statement:

• "USDA is an equal opportunity provider and employer." Any publication prepared with funding from this agreement must include acknowledgement to USDA, Natural Resources Conservation Service."

The recipient is responsible for ensuring that an acknowledgment of NRCS is made during news media interviews, including popular media such as radio, television, and news magazines, that discuss in a substantial way work funded by this award.

XII. COST-SHARING REQUIREMENTS

a. If the award has specific cost-sharing requirements, the cost-sharing participation in other projects may not be counted toward meeting the specific cost-share requirement of this award, and must come from non-Federal sources unless otherwise stated in the applicable program announcement.

b. Should the recipient become aware that it may be unable to provide the cost-sharing amount identified in this award, it must— 1. Immediately notify the NRCS administrative contact of the situation. 2. Specify the steps it plans to take to secure replacement cost sharing. 3. Indicate the plans to either continue or phase out the project in the absence of cost sharing.

c. If NRCS agrees to the organization's proposed plans, the recipient will be notified accordingly. If the organization's plans are not acceptable to NRCS, the award may be subject to termination. NRCS modifications to proposed cost sharing revisions are made on a case-by-case basis.

d. Failure by the recipient to notify NRCS in accordance with paragraph (b) above may result in the disallowance of some or all the costs charged to the award, the subsequent recovery by NRCS of some of the NRCS funds provided under the award, and possible termination of the award, and may constitute a violation of the terms and conditions of the award so serious as to provide grounds for subsequent suspension or debarment.

e. The recipient must maintain records of all project costs that are claimed by the recipient as cost sharing as well records of costs to be paid by NRCS. If the recipient's cost participation includes in-kind contributions, the basis for determining the valuation for volunteer services and donated property must be documented.

XIII. PROGRAM INCOME

Income derived from patents, inventions, or copyrights will be disposed of in accordance with the recipient's own policies. General program income earned under this award during the period of NRCS support must be added to total project funds and used to further the purpose and scope of this award or the legislation under which this award is made.

XIV. NONEXPENDABLE EQUIPMENT

Recipients purchasing equipment or products with funds provided under this award are encouraged to use such funds to purchase only American-made equipment and products. Title to nonexpendable equipment purchased with award funds will vest in the recipient upon completion of the award project and acceptance by NRCS of required final reports. When equipment is no longer needed by the recipient and the per-unit fair market value is less than \$5,000, the recipient may retain, sell, or dispose of the equipment with no further obligation to NRCS. However, if the per-unit fair market value is \$5,000 or more, the recipient must submit a written request to the NRCS administrative contact for disposition instructions.

XV. LIMIT OF FEDERAL LIABILITY

The maximum financial obligation of NRCS to the recipient is the amount of funds indicated in the award as obligated by NRCS. However, in the event that an erroneous amount is stated on the approved budget, or any supporting document relating to the award, NRCS will have the unilateral right to make the correction and to make an appropriate adjustment in the NRCS share of the award to align with the Federal amount authorized.

XVI. MODIFICATIONS AND TERMINATIONS

NRCS may amend or modify the award through an exchange of correspondence between authorized officials of the recipient and NRCS. The award is subject to termination if NRCS determines that the recipient has failed to comply with the terms and conditions of the award. In the event that the award is terminated, the financial obligations of the parties

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will be those set forth in 2 CFR Part 200.339.

XVII. AWARD CLOSEOUT

Award closeout is the process by which NRCS determines that all required project activities have been performed satisfactorily and all necessary administrative actions have been completed.

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MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF LONG BEACH, MISSISSIPPI
AND
THE LONG BEACH WATER MANAGEMENT DISTRICT

WHEREAS, on or about June 4, 2019, the City of Long Beach, Mississippi (hereinafter referred to as "City") and the Long Beach Water Management District (hereinafter referred to as "District") entered into an Interlocal Governmental Cooperation Agreement relating to the maintenance of two (2) drainage canals commonly referred to as Canal No. 1 and Canal 2/3; and

WHEREAS, under the terms of the Interlocal Agreement the District agreed to pay the City Nine Thousand, One Hundred Fifty-Five and 00/100 Dollars (\$9,155.00) per month for the City to perform routine maintenance work on the drainage canals. Additionally, the Interlocal Agreement provided that the City would perform other drainage work such as removing heavy shoaling and repair slopes due to storm events at an additional cost; and

WHEREAS, the City has received grant funds from the United States Department of Agriculture Natural Resources Conservation Service "NRCS" to make repairs to Canal 2/3 and Canal No. 1 as a result of a storm event occurring on May 29, 2018; and

WHEREAS, the grant funds are in the amount of One Hundred One Thousand, Five Hundred and 00/100 Dollars (\$101,500.00) for the Canal No. 1 project (Commission Road) and in the amount of Three Hundred Forty-Five Thousand and 00/100 Dollars (\$345,000.00) for the Canal No. 2/3 Project ("Espy to 28th Street"); and

WHEREAS, as a condition to awarding the Grants, the NRCS requires a local match to include pre-construction engineering costs and seventeen and one-half percent (17½%) of the total construction cost; and

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WHEREAS, the local match for the Commission Road Project is Eleven Thousand, Nine Hundred and 00/100 Dollars (\$11,900.00) in pre-construction engineering fees and Seventeen Thousand, Seven Hundred Sixty-Two and 50/100 Dollars (\$17,762.50) in construction costs or a total of Twenty-Nine Thousand, Six Hundred Sixty-Two and 50/100 Dollars (\$29,662.50); and

WHEREAS, the local match for the Espy Road to 28th Street Project is Thirty Thousand, Three Hundred Eighty and 00/100 Dollars (\$30,380.00) in pre-construction engineering fees and Sixty Thousand, Five Hundred Seventy-Five and 00/100 Dollars (\$60,575.00) in construction costs or a total of Ninety Thousand, Nine Hundred Fifty-Five and 00/100 Dollars (\$90,955.00); and

WHEREAS, the parties agree that the monthly payment of Nine Thousand, One Hundred Fifty-Five and 00/100 Dollars (\$9,155.00) paid by the District to the City shall be set aside by the City to cover the cost for the local match due on the NRCS grants for the Commission Road and the Espy to 28th Street Projects in a total amount not to exceed One Hundred Twenty Thousand, Six Hundred Seventeen and 50/100 Dollars (\$120,617.50) beginning with the September, 2019 payment.

FOR AND IN CONSIDERATION of the foregoing, and other good and valuable consideration, the Parties agree as follows:

1. The District agrees to pay to the City the pre-construction engineering fees and the local match for the Commission Road and Espy to 28th Street Projects in an amount not to exceed One Hundred Twenty Thousand, Six Hundred Seventeen and 50/100 Dollars (\$120,617.50). These projects are being funded through Grants from the U.S. Department of Agriculture Natural Resources Conservation Service "Emergency Watershed Protection Program-Recovery" in the estimated amounts of One Hundred One Thousand, Five Hundred and

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00/100 Dollars (\$101,500.00) and Three Hundred Forty-Five Thousand and 00/100 Dollars (\$345,000.00).

2. Payments of the local match by the District shall be from the Nine Thousand, One Hundred Fifty-Five Thousand and 00/100 Dollars (\$9,155.00) monthly payments made from the District to the City pursuant to the terms of the Interlocal Government Cooperation Agreement entered into between the parties beginning with the September, 2019 payment. During any particular month, if the amount due for the local match exceeds the amount of funds received by the City pursuant to the monthly payments of Nine Thousand, One Hundred Fifty-Five and 00/100 Dollars (\$9,155.00) the District agrees to pay additional amounts as necessary to satisfy the local match requirements. However, the total amount paid by the District for these two (2) projects shall not exceed the One Hundred Twenty Thousand, Six Hundred Seventeen and 50/100 Dollars (\$120,617.50) unless the District agrees otherwise.

3. The City agrees to work in conjunction with the District in developing the contract specifications for the projects and which must be approved by the District before either project goes out for bids. In addition, the District must approve any contract changes and shall be allowed to monitor the construction work.

WITNESS our signatures this the _____ day of August, 2019.

LONG BEACH WATER MANAGEMENT
DISTRICT)

BY: [Signature]
CHAIRMAN

THE CITY OF LONG BEACH, MS

BY: [Signature]
MAYOR GEORGE BASS

There come on for discussion the Amended and Restated Lease Agreement – Long Beach Harbor Resorts, LLC, whereupon Alderman Frazer made motion to move this item to the end of the meeting. Due to the nature of discussion, it would need to be handled in executive session. Alderman Lishen made a substitute motion seconded by Alderman Parker to defer any amendments to this lease due to pending litigation between the lessee and Secretary of State. The Mayor called for a vote, whereupon the motion failed.

The Mayor then reverted to the previous motion presented by Alderman Frazer and asked for a second. The motion was seconded by Alderman Bennett, whereupon motion passed with a majority vote.

There came on for discussion, under the Mayor’s Report, an opportunity to apply for \$1,000,0000 of grant funds for drainage work. If awarded, this grant would require a \$250,000 match. The Mayor requested the Board to allow Pickering Firm to assist the

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City in the preparation of the grant application under their current contract. Alderman McCaffrey made motion seconded by Alderman Parker and unanimously carried to authorize Pickering Firm's services for grant application.

*

*

There came on for discussion a need to request Harrison County's help with sand at the Fetch Dog Park. Alderman Parker made motion seconded by Alderman Frazer and unanimously carried to approve the following resolution:

There came on for consideration at a duly constituted meeting of the Board of Aldermen and Mayor of the City of Long Beach held on the 1st day of October, 2019, the following Resolution, which was reduced to writing and presented in advance of the meeting for reading and examination:

RESOLUTION SEEKING THE ASSISTANCE OF THE HARRISON COUNTY BOARD OF SUPERVISORS IN SANDING THE LONG BEACH FETCH DOG PARK IN THE CITY OF LONG BEACH WITH THE SANDING TRUCK, AND FOR OTHER PURPOSES

WHEREAS, the City of Long Beach and the Board of Supervisors of Harrison County, Mississippi have heretofore entered into an Interlocal Agreement to allow and provide for the exchange of services and the provision of assistance between them on behalf of the citizens of Long Beach and Harrison County; and

WHEREAS, from time to time and on occasion the City has also sought the assistance of Harrison County in various areas in which the City has unavailable or inadequate resources, such as paving roads and work in other public areas in need of repair or assistance, and the Harrison County Board of Supervisors has generously responded and complied whenever possible with such requests; and

WHEREAS, the Fetch Dog Park recently constructed in the City of Long Beach is almost completed, but has need for spreading of sand, and the City is without adequate resources and equipment to provide these services, and wishes to request the assistance of Harrison County Board of Supervisors in providing same;

NOW, THEREFORE, be it resolved by the Board of Aldermen of the City of Long Beach that the Harrison County Board of Supervisors be, and same hereby are requested to provide such assistance as may be available to the citizens of Harrison County in the City of Long Beach in the form of sanding, when available from the County and needed in the FETCH DOG PARK for which purpose no municipal funds or resources are available.

BE IT FURTHER RESOLVED, by the Mayor and Board of Aldermen of the City of Long Beach that we express our appreciation to Supervisor Marlin Ladner and the entire Harrison County Board of Supervisors for any assistance it is able to provide in this request.


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The above and foregoing Resolution having been introduced in writing, was first read and considered section by section and then as a whole. This question being put to a roll call vote by the Mayor, the result was as follows:


Alderman Ronald Robertson	voted	Aye
Alderman Timothy McCaffrey, Jr.	voted	Aye
Alderman Kelly Griffin	voted	Aye
Alderman Bernie Parker	voted	Aye
Alderman Mark E. Lishen	voted	Aye
Alderman Patricia Bennett	voted	Aye
Alderman Donald Frazer	voted	Aye

The question having received the Affirmative vote of a majority the Aldermen present and voting, the Mayor declared the motion carried and the resolution and order adopted and approved this 1st day of October, 2019.

APPROVED:


George L. Bass, Mayor

ATTEST:


Stacey Dahl, City Clerk

Based on the recommendations of Department Heads and certification by the Civil Service Commission, Alderman Griffin made motion seconded by Alderman McCaffrey and unanimously carried to approve personnel matters, as follows:

Fire Department:

- Step Increase, Firefighter 2nd Class Jared Bass, FS 7, effective October 1, 2019
- Step Increase, Firefighter 2nd Class Justin Platt, FS 7, effective October 1, 2019

Police Department:

- CTO Pay, Dispatcher 1st Class Clay Anderson, effective October 1, 2019
- Resignation, Police Officer 1st Class Marcus Kaszubowski, effective September 30, 2019
- New Hire, Police Officer 1st Class David Duncan, PS-9-B, effective October 1, 2019

Alderman Lishen made motion seconded by Alderman Griffin and unanimously carried to approve the following contract with Lagniappe Construction Company for the Clower Avenue Water System Improvements, and authorize Mayor to execute same:

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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

September 13, 2019

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

RE: Clower Avenue Water System Improvements - 2019

Ladies and Gentlemen:

At a previous meeting, the referenced construction Contract was approved. Since then, the Contract has been executed by the Contractor and is herewith submitted for final City approval and execution by the Mayor.

Sincerely,

David Ball, P.E.

DB:1037
Attachment

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**EJCDC
SUGGESTED FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR FOR
CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Long Beach, MS, P. O. Box 929 Long Beach, MS 39560

(Owner) and Lagniappe Construction Company, LLC 5056 A Avenue, Long Beach, MS 39560

(Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

CLOWER AVENUE WATER SYSTEM IMPROVEMENTS - REBID

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

BASE BID, ALTERNATE BID 1, and ALTERNATE BID 2

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by

Overstreet & Associates, PLLC
161 Lameuse St., Suite 203
Biloxi, MS 39530

(Engineer), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

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ARTICLE 4 - CONTRACT TIMES

4.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within 90 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 90 days after the date when the Contract Times commence to run.

4.03 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$500.00 for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500.00 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, below:

A. For all Work other than Unit Price Work, a Lump Sum of: N/A

(words)

(numerals)

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.02 of the General Conditions.

B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 5.01.B:

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As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

UNIT PRICE WORK

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Estimated</u>
-----------------	--------------------	-------------	---------------------------	-------------------	------------------

AS PER ATTACHED BID

TOTAL OF ALL ESTIMATED PRICES _____ \$ _____
(words) (numerals)

C. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

Three Hundred Thirty-Six Thousand, Two Hundred Eighty-Two dollars and 30/100-----(\$336,282.30)

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the third Tuesday of each month during performance of the Work as provided in Paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:

a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and

b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 98 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 98 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

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6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate allowed by law at the place of the project.

ARTICLE 8 -- CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.

E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

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ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to 7, inclusive).
 2. Performance bond (pages 1 to 2, inclusive).
 3. Payment bond (pages 1 to 2, inclusive).
 4. Other bonds (pages ____ to ____, inclusive). N/A
 - a. Bid Bond (pages 1 to 2, inclusive).
 - b. ____ (pages ____ to ____, inclusive). N/A
 - c. ____ (pages ____ to ____, inclusive). N/A
 5. General Conditions (pages 1 to 62, inclusive).
 6. Supplementary Conditions (pages 1 to 9, inclusive).
 7. Specifications as listed in the table of contents of the Project Manual.
 8. Drawings consisting of 11 sheets with each sheet bearing the following general title: WATER SYSTEM IMPROVEMENTS (2019) CLOWER AVENUE
 9. Addenda (numbers 1 to 1, inclusive).
 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 13 inclusive).
 - b. Documentation submitted by Contractor prior to Notice of Award (pages ____ to ____, inclusive). N/A
 11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (pages 1 to 1, inclusive).
 - b. Work Change Directives.
 - c. Change Order(s).
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

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ARTICLE 10 - MISCELLANEOUS

10.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Other Provisions

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IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____, 2019 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

City of Long Beach

Langiappe Construction Company, LLC

By: *[Signature]*

By: *[Signature]*

Title: Mayor

Title: *Managing member*

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: *Stacy Dahl*

Attest: _____

Title: *City Clerk*

Title: _____

Address for giving notices:

Address for giving notices:

P. O. Box 929

5056 A Avenue

Long Beach, MS 39560

Long Beach, MS 39560

228-863-1556

228-697-0515

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

License No.: 22526-MC
(Where applicable)

Agent for service or process: _____



(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)

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At the request of City Attorney Jim Simpson, Alderman Frazer made motion seconded by Alderman McCaffrey and unanimously carried to declare an Executive Session for the transaction of public business, to wit: To discuss with and seek legal advice and counsel of the City Attorney regarding potential litigation and lease negotiations.

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

* * *

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

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

APPROVED:

Alderman Donald Frazer, At-Large

Alderman Ronald Robertson, Ward 1

Alderman Bernie Parker, Ward 2

Alderman Kelly Griffin, Ward 3

Alderman Timothy McCaffrey, Jr., Ward 4

Alderman Mark E. Lishen, Ward 5

Alderman Patricia Bennett, Ward 6

Date

ATTEST:

Kini Gonsoulin, Deputy City Clerk