

CONTRACT DOCUMENTS & TECHNICAL  
SPECIFICATIONS FOR THE

**THE CITY OF BAY ST. LOUIS**

**Bay St. Louis Unit Price  
Maintenance Contract for Roadways**

HANCOCK COUNTY, MISSISSIPPI

PREPARED FOR:



688 Highway 90  
Bay Saint Louis, MS  
39520  
(228) 466-8951

Michael Favre – Mayor

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PREPARED BY:



407 Hwy 90  
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CONTRACT DOCUMENTS AND SPECIFICATIONS  
FOR THE

**Bay St. Louis Unit Price  
Maintenance Contract for Roadways**

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## 00100 ADVERTISEMENT FOR BIDS

### ADVERTISEMENT FOR BIDS

#### GENERAL NOTICE

The City of Bay St. Louis (Owner) is requesting Bids for the construction of the following Project:

#### **Bay St. Louis Unit Price Maintenance Contract for Roadways**

Sealed bids for the construction of the Project will be received at the City of Bay St. Louis City Hall Conference Room, 2<sup>nd</sup> Floor located at 688 Highway 90, Bay St. Louis, MS 39520, until [day], [date] at [time for receipt of Bids] local time. At that time, all bids received will be publicly opened and the bid amount read aloud.

The work included in the Contract shall consist primarily of Construction of the following items:

Repairs, replacement, and ongoing maintenance of the City's roadways

#### OBTAINING THE BIDDING DOCUMENTS

Information and Bidding Documents for the Project can be found at the following designated website:

[www.baystlouis-msbids.com](http://www.baystlouis-msbids.com)

Plans and Specifications are being made available via hard copy or digital download. Plan Holders are required to log-in or register for an account to view or order bid documents at [www.baystlouis-msbids.com](http://www.baystlouis-msbids.com). Bid documents are non-refundable and must be purchased through the website. Questions regarding website registration and online orders are to contact the Plan House at (228) 248-0181. No partial sets of drawings or project manuals will be issued. No contract documents (hard copies or electronic copies) will be issued to Contractors within twenty-four (24) hours of the time indicated above for receiving bids.

The Issuing Offices for the Bidding Documents is:

City of Bay St. Louis  
688 Highway 90  
Bay St. Louis, MS 39520

Chiniche Engineering & Surveying  
407 Hwy 90  
Bay St. Louis, MS 39520

Prospective Bidders may examine the Bidding Documents at the Issuing Offices on Monday-Thursday between 8:00am-5:00pm and Friday 8:00am-12:00pm CST.

## 00100 ADVERTISEMENT FOR BIDS

### INSTRUCTIONS TO BIDDERS

Bids must be submitted upon the standard forms contained within these contract documents furnished by Engineer, noted in the Information for Bidders. Each bid shall be accompanied by a Certified Check on a solvent bank or a Bidder's Bond issued by a Surety Company licensed to operate in the State of Mississippi, in the amount of five thousand dollars (\$5,000.00) payable to the owner as bid security. Bidders shall also submit a current financial statement, if requested by the Owner. The successful bidders will be required to furnish a Performance Bond and a Payment Bond each in the amount of twenty-five thousand dollars (\$25,000.00).

The required documents shall be submitted in a sealed envelope and the outside of the envelope shall be marked plainly as: Bay St. Louis Unit Price Maintenance Contract for Roadways and the Certificate of Responsibility Number.

Bids shall be deposited with the City of Bay St. Louis, 688 Highway 90, Bay St. Louis, MS 39520 or for those interested, bids can be submitted at [www.baystlouis-msbids.com](http://www.baystlouis-msbids.com) under the project page, prior to the hour and date designated above. No oral, telegraphic, telephonic, or e-mail proposals shall be considered. All interpretations of drawings and specifications shall be directed to the project manager at Chiniche Engineering and Surveying by email to: [carrie@chiniche.com](mailto:carrie@chiniche.com). An acknowledged received copy of all Addenda issued by the Engineer via Plan House must be included with the bid proposal. No bidder may withdraw his bid within sixty (60) days after the date of actual bid opening without Owner's consent. The Owner reserves the right to reject any or all bids and to waive any or all informalities.

Work to be performed shall be in accordance with all Federal, State and Local Regulations and Codes.

Approved by the order of the City of Bay St. Louis Council Members, this the **March 18, 2025**.

#### PUBLISH:

1<sup>st</sup> Advertisement Date: **Month XX, 2025**

2<sup>nd</sup> Advertisement Date: **Month XX, 2025**

## 00200 INFORMATION FOR BIDDERS

1. **RECEIPT AND OPENING OF BIDS:** Bids will be received by the City of Bay St. Louis no later than **X:XX p.m.** Local Time on **DAY, DATE**, at the at the Bay St. Louis City Hall, 688 Hwy 90, Bay St. Louis, MS 39520.
2. **BIDS:**
  - A. Shall be made on the forms provided and all applicable blank spaces filled in. Alterations, erasures, or changes of any kind must be initialed by the BIDDER and shall not contain any recapitulation of the work to be done. No oral, telephonic, or telegraphic proposals will be considered.
  - B. BIDDERS ARE HEREBY NOTIFIED THAT ANY PROPOSAL ACCOMPANIED BY LETTERS, QUALIFYING IN ANY MANNER, THE CONDITION UNDER WHICH THE PROPOSAL IS TENDERED, WILL BE CONSIDERED AS AN IRREGULAR BID AND SHALL NOT BE CONSIDERED IN MAKING THE AWARD.
  - C. Bids may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Bids received after the time and date specified shall not be considered.
  - D. Submit bids in a sealed envelope marked in the lower left-hand corner as follows:
    1. Bid for construction of: Bay St. Louis Unit Price Maintenance Contract for RoadwaysCertificate of Responsibility No. \_\_\_\_\_

OR

2. Submit bids Online at [www.baystlouis-msbids.com](http://www.baystlouis-msbids.com)
- E. Any addenda issued during the bidding shall be noted on the Bid Form and shall become a part of the executed Contract.
- F. Electronic bids will be accepted in accordance with MS Code Ann.Â§ 31-7-13 (c)(v). Plans and specifications are being made available via hard copy or digital download. Plan Holders are required to log-in or register for an account to view or order bid documents at [www.baystlouis-msbids.com](http://www.baystlouis-msbids.com). Bid documents are non-refundable and must be purchased through the website. Questions regarding website registration and online orders are to contact the Plan House at (228) 248-0181. No partial sets of drawings or project manuals will be issued. No contract documents (hard copies or electronic copies) will be issued to Contractors within twenty-four (24) hours of the time indicated above for receiving bids.

## **00200 INFORMATION FOR BIDDERS**

### **3. METHOD OF BIDDING:**

- A. All bids shall remain open for sixty (60) calendar days after the day of the bid opening; however, the Owner may, at its sole discretion, release any bids and return the Bid Security for such bid prior to that date.
- B. Any extensions of time for bids to remain open beyond the sixty-day period may be made only by mutual agreement between the Owner, the apparent Successful Bidder(s) and the surety for the apparent Successful Bidder(s).
- C. The City of Bay St. Louis reserves the right to reject any or all bids and to waive any or all informalities.
- D. Each Bidder is required to bid on all items listed in the Bid Schedule. Determination of the lowest bidder(s) shall be on the basis of the sum of the total bid.

### **4. ADDENDA AND INTERPRETATIONS:**

- A. Should a BIDDER find discrepancies in, or omissions from, the drawings or specifications or should they be in doubt as to their written meaning, they should at once notify the ENGINEER in writing, who will send a written instruction or interpretation to all known holders of the documents. The ENGINEER will not be responsible for any oral instructions. Without written notification to the ENGINEER prior to submission of a bid, the BIDDER accepts sole responsibility for work items required for completion of the intent of the project.
- B. Addenda to specifications or drawings that may be issued before or during the time of bidding shall be included in the bid form and will become a part of the Contract.

### **5. CERTIFICATE OF RESPONSIBILITY NUMBER:**

- A. Each CONTRACTOR submitting a bid must show on the face of the envelope containing the bid, their State of Mississippi Certificate of Responsibility Number unless there appears a statement on the face of the envelope that the enclosed bid does not exceed \$50,000.00 with respect to public projects or \$100,000.00 with respect to private projects.
- B. No bids will be accepted, opened, or considered unless the above information is given as specified.
- C. Sufficient evidence that said Certificate of Responsibility Number has been issued and is in effect at the time of receiving bids, and that BIDDER'S Certificate of Responsibility work classification(s) qualifies them to perform the

## 00200 INFORMATION FOR BIDDERS

type(s) of work required for this project, must be submitted when required by OWNER or ENGINEER.

6. **BID SECURITY:** Each bid must be accompanied by a certified check of the BIDDER, or a Bid Bond prepared on the form of a bid bond as included herein, duly executed by the BIDDER as principal and having as surety thereon a surety company licensed by the State of Mississippi and signed by an agent resident in Mississippi, in the amount of five thousand dollars (\$5,000.00).
7. **LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT:** A successful BIDDER, upon their failure or refusal to execute and deliver the contract and bonds required within ten (10) days after they have received the contract for execution, shall forfeit to the OWNER, as liquidated damages, the bid security deposited with their bid.
8. **SECURITY FOR FAITHFUL PERFORMANCE:** Simultaneously with their delivery of the executed Contract, the CONTRACTOR shall furnish Contract Performance and Payment Bonds in the amount of twenty-five thousand dollars (\$25,000.00) for the payment of all persons performing labor on this Contract and for furnishing all materials in connection with this Contract. The surety on such Bond or Bonds shall be a duly authorized Surety Company doing business in the State of Mississippi.
9. **LAW AND REGULATIONS:** The BIDDERS'S attention is directed to the fact that all applicable federal, state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.
10. **CONDITION OF WORK:** Each BIDDER shall visit the site and inform themselves fully of the conditions at the site relating to the completion of the project. Failure to do so will not relieve a successful BIDDER of their obligation to furnish all material and labor necessary to carry out the provisions of their contract.
11. **OBLIGATION OF BIDDER:** At the time of the opening of bids, each BIDDER will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Drawings, Specifications and Contract Documents (including addenda issued, if any).
12. **PROPOSAL OF GUARANTEES:** Proposal guarantees will be returned to the unsuccessful BIDDER(S) as soon as a Contract has been awarded and to the successful bidder(s) after they have executed the Contract and have furnished Contract Performance and Payment Bonds and Certificates of Insurance as required.

## 00200 INFORMATION FOR BIDDERS

13. **NON-COLLUSION AFFIDAVIT:** CONTRACTOR must complete (in duplicate) the non-collusion affidavits included in the Contract Documents 00225 and submit same as part of their bid. FAILURE TO DO SO MAY DISQUALIFY THEIR BID.
14. **INTERPRETATIONS:** No oral interpretation will be made to any BIDDER as to the meaning of the Drawings and Specifications or Contract Documents. Only written requests for interpretation of the Drawings and Specifications shall be submitted to the ENGINEER for a formal decision which will be given in writing to all Drawing and Specification holders. Any questions or request for clarifications shall be submitted via email to [carrie@chiniche.com](mailto:carrie@chiniche.com). All questions or requests shall be submitted no later than 4 working days prior to date of the bid.
15. **BUILDING PERMIT:** In accordance with the City of Bay St. Louis Building Department, if a Building Permit is required however, there will be no assessment of fees for the permit. Contractor is responsible for coordinating with the City of Bay St. Louis's Building Department on all required inspections.
16. **QUALIFICATIONS OF BIDDERS:** It is the intention of the OWNER to make an award to a BIDDER competent to do the work and who does not propose employing subcontractors. The OWNER may also make such investigations as he deems necessary to determine the ability of the BIDDER to perform the work and the BIDDER shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER will consider the BIDDER's qualifications in evaluating the BID and reserves the right to reject a Bid if the evidence submitted by or investigation of such BIDDER fails to satisfy the OWNER that such BIDDER is properly qualified to carry out the items of Work contemplated therein.
  - A. To respond to a work order under this contract, a successful bidder must have a sufficient variety and units of equipment to adequately prosecute the work. Therefore, the Owner is requiring all bidders to provide a listing of equipment owned and titled under Mississippi law to the contracting company. The listing is a part of the proposal and must be submitted with the bid. Owner will consider this information in determining the award of the Contract.
  - B. The CONTRACTOR will not employ any Subcontractors, other person or organization, unless the OWNER or ENGINEER determines that there is good cause for doing so. Work completed by any Subcontractor, person, or organization not under contract with the OWNER is subject to rejection of all pay items for the authorized Work Order.
  - C. The CONTRACTOR shall be fully responsible for all acts and omissions of his persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any



## 00200 INFORMATION FOR BIDDERS

obligation on the part of OWNER or ENGINEER to pay or to see to the payment of monies due to persons or organizations, except as may otherwise be required by law. OWNER or ENGINEER may furnish to other persons or organizations, to the extent practicable, evidence of amounts paid to the CONTRACTOR on account of specific Work done in accordance with the schedule of values.

- D. The divisions and sections of the Specifications and the identifications of Drawings shall not control the CONTRACTOR in dividing the Work or delineating the Work to be performed by specific trades.
- 
- 17. **INSURANCE:** The CONTRACTOR will be required to carry the types and amounts of insurance specified in the Supplementary General Conditions, as enclosed herein for the full term of the Contract.
  - 18. **CONTRACT AWARD:** Award of Contract, if made, shall be within **90** days of date of receipt of Bids.
  - 19. **ISSUANCE OF "NOTICE TO PROCEED":** If the Contract is awarded, the OWNER will issue the "Notice to Proceed" within **60** days after the date of agreement of the Contract.
  - 20. **METHOD OF AWARD:** At the time the contract is to be awarded, if the Lowest Bid does not exceed the construction budget for the project, the Award will be made following one of the options below:
    - B. The contract may be awarded to the three (3) lowest and best bidders. The OWNER will then select the contractor (from the list of awarded contracts) to perform the work based on the contractor's availability to start work, per authorized Work Order.
    - C. The Owner reserves the right to waive irregularities and to reject any or all bids.
    - D. The Owner reserves the right to disqualify and reject the low bidder and make award to another bidder if, in Owner's judgment, it is in the Owner's best interest. A bidder may be disqualified for the reason below, but not limited to:
      - 1. Being in arrears on existing contracts.
      - 2. Being in litigation with the Owner or other entities.
      - 3. Having defaulted on or failed to satisfactorily complete a previous contract including warranty obligations.

## 00200 INFORMATION FOR BIDDERS

- E. The Owner may cancel the award of the contract at any time prior to execution by all parties. In the event of the cancelation of the contract, the owner shall not be deemed liable by all parties.
- 21. **PRE-BID:** TBD.
- 22. **NON-RESIDENT BIDDER:** Any Non-Resident Bidder shall include a copy of the non-resident contractor's current state contractor preference law, or the bid may be rejected.
- 23. **BID PACKAGE:** The Bid Package shall include the Bid Proposal, Non-Collusion Affidavit (in duplicate), Bid Security and Non-Resident Bidder (if applicable), and any other documents required by the Owner or Funding Agency.

**END OF SECTION**

**00225 NON-COLLUSION AFFIDAVIT/DEBARMENT CERTIFICATION**

Attest: \_\_\_\_\_

Business \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**NON-COLLUSION AFFIDAVIT**  
(TO BE EXECUTED IN DUPLICATE)

STATE OF MISSISSIPPI  
COUNTY OF HANCOCK

I, \_\_\_\_\_  
(name of person signing affidavit)

individually, and in my capacity as \_\_\_\_\_  
(title)

of \_\_\_\_\_  
(name of firm, partnership, limited liability company, or corporation)

being duly sworn, on oath do depose and say as follows:

(a) That \_\_\_\_\_ Bidder on the **Bay St. Louis Unit Price Maintenance Contract for Roadways** for the **City of Bay St. Louis**, has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; nor have any of its officers, partners, employees or principal owners.

(b) further, that neither said legal entity nor any of its directors, officers, partners, principal owners or managerial employees are currently debarred from bidding on public contracts by the State of Mississippi or any of its agencies; or by one or more of the other states or any of their agencies; or by the Federal Highway Administration.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(SEAL)

# 00225 NON-COLLUSION AFFIDAVIT/DEBARMENT CERTIFICATION



## Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

### (BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period preceding this application 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 (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Business Name \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_  
Name and Title of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

## 00225 NON-COLLUSION AFFIDAVIT/DEBARMENT CERTIFICATION

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### INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

END OF SECTION

## **00300 PERMITS**

### **1.0 GENERAL**

- A. Contractor shall conform to all State, Federal and Local Permit Requirements.
- B. Contractor shall coordinate with Bay St. Louis Building Department for required inspections.

**END OF SECTION**

## BID BOND (PENAL SUM FORM)

<b>Bidder</b> Name: _____ Address ( <i>principal place of business</i> ): _____ _____	<b>Surety</b> Name: _____ Address ( <i>principal place of business</i> ): _____ _____
<b>Owner</b> Name: <u>City of Bay St. Louis</u> Address ( <i>principal place of business</i> ): <u>688 Highway 90</u> <u>Bay St. Louis, MS 39520</u> _____	<b>Bid</b> Project ( <i>name and location</i> ): <u>Bay St. Louis Unit Price Maintenance Contract for</u> <u>Roadways</u> _____ Bid Due Date: _____
<b>Bond</b> Penal Sum: _____ Date of Bond: _____	
Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.	
<b>Bidder</b> _____ ( <i>Full formal name of Bidder</i> )	<b>Surety</b> _____ ( <i>Full formal name of Surety</i> ) ( <i>corporate seal</i> )
By: _____ ( <i>Signature</i> )	By: _____ ( <i>Signature</i> ) ( <i>Attach Power of Attorney</i> )
Name: _____ ( <i>Printed or typed</i> )	Name: _____ ( <i>Printed or typed</i> )
Title: _____	Title: _____
Attest: _____ ( <i>Signature</i> )	Attest: _____ ( <i>Signature</i> )
Name: _____ ( <i>Printed or typed</i> )	Name: _____ ( <i>Printed or typed</i> )
Title: _____	Title: _____
Notes: (1) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.	

## **00675 BID BOND**

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder occurs upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation will be null and void if:
  - 3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2. All Bids are rejected by Owner, or
  - 3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions does not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action will be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety, and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder must be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond will be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.



## 00700 BID PROPOSAL

### BID PROPOSAL

Proposal of \_\_\_\_\_ (hereinafter called "BIDDER"), organized and existing under the laws of the State of MISSISSIPPI doing business as a \_\_\_\_\_ (insert: corporation, partnership, limited liability company, or individual) to the **CITY OF BAY ST. LOUIS** (hereinafter called "OWNER"). In compliance with your advertisement for Bids, BIDDER, hereby proposes to perform all WORK for construction of

#### **Bay St. Louis Unit Price Maintenance Contract for Roadways**

In strict accordance with the CONTRACT DOCUMENTS, within the time set forth herein, and at the prices stated below. By submission of the BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to their own organization, that this BID has been developed independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

The Bidder understands the nature of a maintenance project and that the project may consist of one, two, or numerous project(s) called Work Orders (WO) which will be issued as work is available and needed by the City of Bay St. Louis.

The Bidder understands and agrees that the City of Bay St. Louis is only obligated to issue one work order under the Bay St. Louis Unit Price Maintenance Contract for Roadways.

The Bidder hereby understands and agrees with the process outlined for Work Orders in section 00900 Agreement Between Owner and Contractor.

## 00700 BID PROPOSAL

The bidder also understands and agrees with the difference between “Normal Repair Work Orders”, “Urgent Repair Work Orders” and “Emergency Repair Work Orders” and that the response time requirements differs as well as compensation.

The bidder further agrees that “response time” as it relates to Urgent Repair Work Orders and Emergency Repair Work Orders shall mean the time it takes the contractor to adequately mobilize (as determined by the City Engineer, his authorized representative or the Owner) equipment, labor, and materials to the project site to perform subsurface investigation and perform the repair/replacement. The “response time” shall start when the contractor’s emergency contact number is called by an authorized member of the City’s staff.

Bidder hereby agrees to be available for work under this contract on a date to be specified in the written "Notice to Proceed" from the City of Bay St Louis. The bidder agrees to complete individual Work Order(s) on or before the Completion Date stated on each Work Order.

Completion of Work Order shall include mobilization to the site; subsurface investigation; repair/replacement; project site clean-up and demobilization; submittal of as-built drawings as required; and submittal of pay request in a manner satisfactory to the Engineer or Owner.

BIDDER further agrees to pay as liquidated damages, the sum of \$500.00 for each consecutive calendar day thereafter as provided for elsewhere in these CONTRACT DOCUMENTS.

BIDDER ACKNOWLEDGES receipt of the following ADDENDA:

NUMBER: \_\_\_\_\_ DATE: \_\_\_\_\_

NUMBER: \_\_\_\_\_ DATE: \_\_\_\_\_

NUMBER: \_\_\_\_\_ DATE: \_\_\_\_\_

## 00700 BID PROPOSAL

NUMBER: \_\_\_\_\_ DATE: \_\_\_\_\_

By submitting this BID, the BIDDER certifies that they have thoroughly examined the plans, specifications and contract documents and have visited the job site to inform themselves fully of the conditions at the site relating to the completion of the project.

In accordance with the requirements of the Plans, Specifications and Contract Documents, BIDDER proposes to furnish all necessary materials, equipment, labor, tools, and other means of construction and to construct the Project in accordance with the Contract Documents within the specified Contract Time for the following Unit Prices specified below.

BIDDER further agrees to execute the contract agreement as bound herein within **ten (10)** days after receipt of contract forms from the OWNER.

BIDDER agrees to pay as liquidated damages the amount provided herein for each consecutive calendar day after the Work Order completion date specified in a written and authorized Work Order that they fail to complete the work unless the Work Order Time is extended by a written Change Order.

BIDDER also proposes to execute a Performance Bond, as shown in the Specifications, in an amount of twenty-five thousand dollars (\$25,000.00). This Bond shall not only serve to guarantee the completion of the work on the BIDDERS part, but also to guarantee the excellence of both workmanship and materials until the work is finally accepted.

BIDDER encloses a Bid Bond Amount of five thousand dollars (\$5,000.00) and hereby agree that in case of failure to execute the Contract and furnish the required Bonds within (10) days after the Receipt of Contract Forms, the amount of this

## **00700 BID PROPOSAL**

Certified Check or Bid Bond will be forfeited to the OWNER, as liquidated damages arising out of their failure to execute the Contract as proposed.

It is understood that in case BIDDER is awarded the work, the Certified Check or Bid Bond submitted as Bid security will be returned as stipulated in the Specifications.

Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provision of the Equal Opportunity Clause set forth in the Federal Requirements, if applicable.

The low BIDDER shall supply the names and address of major MATERIAL SUPPLIERS when required to do so by the OWNER.

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices:

### **NOTES:**

1. Any erasure change or alteration of any kind must be initialed by the BIDDER.
2. Bid prices shall include sales tax and all other applicable taxes and fees. Quantities are estimated and there shall be no unit price adjustments should an increase or decrease in quantities be necessary. Bidder also agrees to bid each item in a fair and equitable manner. Any bid items deemed to be "unbalanced" shall be subject to negotiation between Owner and Bidder.
3. Contractor shall submit with this Bid Proposal, a completed, original 00750 Questionnaire. Failure to submit completed form shall result in rejection of the bid.
4. By submission of this bid proposal, the contractor certifies that all work, material, equipment, and incidentals for a complete and operational project per applicable codes and funding requirements are included in their bid.

## **00700 BID PROPOSAL**

5. By submittal of this Bid, Bidder certifies that they will self-perform 100% of the total value of each authorized Work Order.
6. Construction activities shall only be allowed on Monday – Friday from 7:00 am – 5:00 pm. No excavation shall take place after 12:00 pm on Friday, unless authorized in the Work Order by the Owner or Engineer.
7. Work shall only take place Monday – Friday 7:00 AM – 5:00 PM. If any work is required outside of these times, Contractor is required to request for approval, in writing, 48 hours prior to performance of the work.
8. Contractor shall ensure that all facilities are operational at the end of each workday, holiday and weekend.

## 00700 BID PROPOSAL

### BID SCHEDULE

TO: The City of Bay St. Louis  
Owner

The undersigned, in compliance with the request for bids for the above referenced project hereby proposes to furnish all labor, permits, material, machinery, tools, supplies and equipment to faithfully perform all work required for construction of the Project in accordance with the project manual, project drawings and issued Addenda (if any) within the specified time of performance for the following UNIT PRICE amount:

#### BID – Bay St. Louis Unit Price Maintenance Contract for Roadways

ITEM NO.	ITEM DESCRIPTION	QTY	UNIT	UNIT PRICE
	MOBILIZATION- NORMAL WORK ORDER (30 days)	1	LS	-
	MOBILIZATION MULTIPLIER- URGENT WORK ORDER (24 hours)	1.12	LS	-
	MOBILIZATION MULTIPLIER- EMERGENCY WORK ORDER (4 hours)	1.25	LS	-
	EROSION CONTROL	1	LS	-
	TRAFFIC CONTROL	1	LS	-
	CLEARING AND GRUBBING	1	AC	
	SELECT BACKFILL	1	CY	
	LIMESTONE (NO. 610)	1	CY	
	EXCAVATION	1	CY	
	REMOVAL OF ASPHALT ROADWAY (ALL THICKNESS)	1	SY	
	GEOGRID	1	SY	
	ASPHALT ROADWAY (4" THICK)	1	TON	
	ASPHALT DRIVEWAYS (4" THICK)	1	TON	
	BITUMINOUS HOT-MIX ASPHALT, 2" OVERLAY	1	TON	
	COLD PLANING ASPHALT/MILLING	1	SY	
	SAW CUT (ALL THICKNESSES)	1	LF	
	REMOVE AND REINSTALL OBSTRUCTION	1	LS	

**00700 BID PROPOSAL**

	REMOVE OBSTRUCTION	1	LS	
	ADJUSTMENT OF CASTING, GRATING AND UTILITY APPURTENANCES	1	EA	
	6" THERMOPLASTIC TRAFFIC STRIPE-SKIP WHITE	1	LF	
	6" THERMOPLASTIC TRAFFIC STRIPE- CONTINUOUS WHITE	1	LF	
	6" THERMOPLASTIC TRAFFIC STRIPE-CONTINUOUS WHITE	1	LF	
	6" THERMOPLASTIC TRAFFIC STRIPE-SKIP YELLOW	1	LF	
	6" THERMOPLASTIC TRAFFIC STRIPE-CONTINUOUS YELLOW	1	LF	
	6" THERMOPLASTIC TRAFFIC STRIPE-CONTINUOUS YELLOW	1	LF	
	THERMOPLASTIC DETAIL STRIPE (6" EQUIVALENT LENGTH) (WHITE)	1	LF	
	THERMOPLASTIC DETAIL STRIPE (6" EQUIVALENT LENGTH) (YELLOW)	1	LF	
	THERMOPLASTIC LEGEND (BLUE)	1	SY	
	THERMOPLASTIC LEGEND (WHITE)	1	SY	
	TWO-WAY BLUE REFLECTIVE HIGH PERFORMACE RAISED MARKERS	1	EA	
	THERMOPLASTIC STOP BAR (MUTCD)	1	LF	
	ASPHALT SPEED BUMP (24")	1	LF	
	SOLID SODDING	1	SY	
	HYDRO-SEEDING	1	SY	
	TOPSOIL	1	CY	
<b>TOTAL BID</b>		<b>\$</b>		

## 00700 BID PROPOSAL

### CONTRACTOR

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**\*Documentation requested below  
is required for submission of bid.**

1. Provide E-Verification number  
\_\_\_\_\_
2. Provide UIE Number and status  
\_\_\_\_\_

**CERTIFICATE OF  
RESPONSIBILITY NUMBER:**

\_\_\_\_\_

**END OF SECTION**



## 00750 QUESTIONNAIRE

All prospective Bidders are required to submit 1 original, completed Questionnaire as part of the Bid response. Failure to submit completed form shall result in rejection of the bid.

1. List project history for similar projects within the previous 5 years. Provide Owner contact information, project scope, location and final construction costs.

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2. Provide information regarding any previous projects which the bidding firm has defaulted on the contract or list any construction litigation the bidding firm has been associated with.

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3. Provide company history and ownership details of the bidding firm to include all ownership parties and years of service as a licensed General Contractor.

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4. Provide all Surety information relative to Surety Company associated with Bid Bond to include Name, Address and Agent.

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# **AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

This Agreement is by and between **City of Bay St. Louis** ("Owner") and [ ] ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows: **Bay St. Louis Unit Price Maintenance Contract for Roadways**

## **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: Bay St. Louis Unit Price Maintenance Contract for Roadways

## **ARTICLE 2—THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

- A. The City of Bay St. Louis will issue task specific Work Orders to complete different types of roadway projects under this Contract. Each work order will contain an estimate of quantities and the items necessary to complete the work, along with an estimate of days required to complete the specific project. The individual Work Orders under this term contract must be authorized by the Mayor and/or City Council.
- B. The contract term will be for one (1) year with the ability to renew for two (2) separate one (1) year terms if agreed to by the City and the Contractor. Not less than sixty (60) calendar days before the end of the term of the Contract, the Contractor shall notify the City in writing if it wishes to extend the contract for another one (1) year term. Any work assignments issued during an active term may extend past the end of the term, however, no new work assignments may be issued after the completion of a term without the extension of another one (1) year term. Either party may terminate the contract for convenience with a sixty (60) calendar day notice in writing. The City is not guaranteeing any amount of work, and the work at the end of one (1) year may be more or less than the total bid submitted. The City will review the performance of the successful Contractor and also reserves the right to extend this agreement for an additional three (3) years in one (1) year increments. Unless a project is determined to be an emergency by the Mayor and City Council, work authorizations will not be executed after March 30th of an election year. The newly elected Mayor and City Council will have the option to ratify the term contract or take other actions.
- C. Upon agreement to renew the contract by both the Owner and the Contractor, the original unit prices shall be adjusted in accordance with the federal specified Consumer Price Index (CPI) from the previous calendar year.

## ARTICLE 3—ENGINEER

- 3.01 The Owner has retained Chiniche Engineering & Surveying (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by Engineer.

## ARTICLE 4—CONTRACT TIMES

### 4.01 *Time is 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 Work Orders.

### 4.02 DELETED

### 4.03 *Contract Times: Days*

- A. The Contractor must agree to commence work on each project as described in the Work Order under this unit price contract within a maximum time period of thirty (30) calendar days of receipt of the Work Order, unless the Owner grants a time extension. Failure to initiate work within thirty (30) calendar days for each Work Order will be justification by the Owner for termination of the Agreement.
- B. After issuing a Work Order, authorizing work under this Contract, the Owner and Contractor shall agree upon a schedule of an estimated date of commencement and completion of the work. Contractor’s failure to proceed with the work when good working conditions exist will also constitute justification for termination of the Agreement.
- C. The agreement will expire at the final payment for the last Work Order issued within one calendar year of this agreement’s effective date, or on the one-year anniversary of the agreement effective date, whichever is later. No task order may be issued after the one-year anniversary of the agreement’s effective date, unless the contract has been extended by the Owner.
- D. This Contract will be effective for one (1) year, 365 calendar days with the optional period for renewal of the contract in one (1) year increments for a total optional period not to exceed three (3) additional years after the original Contract time commences.

### 4.04 DELETE

### 4.05 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. 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):
1. *Substantial Completion:* Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion of each Work Order, until the Work is substantially complete.

2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500 for each day that expires after such time until the Work is completed and ready for final payment.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.06 DELETE

#### ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
  - A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer or Owner.

#### ARTICLE 6—PAYMENT PROCEDURES

- 6.01 *Submittal and Processing of Payments*
  - A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer or Owner as provided in the General Conditions.
- 6.02 *Progress Payments; Retainage*
  - A. Progress payments will not be made to the contractor.

B. Owner shall make full and final payments per Work Order on the basis of Contractor's Applications for Payment, provided that such Application for Payment has been submitted in a timely manner and otherwise meets the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in 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 elsewhere in the Contract.

B. Retainage will not be withheld from payments.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work, Owner shall pay the Work Order Price in accordance with **Paragraph 15.06** of the General Conditions.

6.04 DELETE

6.05 DELETE

## **ARTICLE 7—CONTRACT DOCUMENTS**

7.01 *Contents*

A. The Contract Documents consist of all of the following:

1. This Agreement.
2. Bonds:
  - a. Performance bond (together with power of attorney).
  - b. Payment bond (together with power of attorney).
3. General Conditions.
4. Supplementary Conditions.
5. Specifications as listed in the table of contents of the project manual (**copy of list attached**).
6. Drawings (not attached but incorporated by reference) consisting of **[number]** sheets with each sheet bearing the following general title: **Bay St. Louis Unit Price Maintenance Contract for Roadways**
7. Addenda (numbers **[number]** to **[number]**, inclusive).
8. Exhibits to this Agreement (enumerated as follows):
  - a. Contractor's Bid Page
  - b. Contractor's Equipment List
9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
  - a. Notice of Award
  - b. Notice to Proceed.
  - c. Work Change Directives.
  - d. Change Orders.

- d. Work Orders.
  - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.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 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **8.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
  - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
  - 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
  - 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
  - 7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no 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.

8. 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.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

#### 8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

Owner:

City of Bay St. Louis

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone:

Email:

(If **[Type of Entity]** is a corporation, attach evidence of authority to sign. If **[Type of Entity]** is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Contractor:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If **[Type of Entity]** is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone:

Email:

License No.:

(where applicable)

State:

\_\_\_\_\_



## Addendum to City of Bay St. Louis Contracts

**This Addendum between the City of Bay St. Louis, Mississippi (“BSL”) and (“Contractor”) is an integral part of the contract. Contractor acknowledges that BSL is a governmental entity and is subject to the laws of the State of Mississippi governing actions of governmental bodies. Contractor further acknowledges that BSL does not waive, relinquish or forfeit any of the rights, benefits, protections, guaranties or prohibitions that may be provided under any law, statute, regulation or policy. The parties agree that this Addendum is incorporated into the contract and agree that should any provision of the contract conflict with this Addendum, the terms of the Addendum control.**

1. BSL contracts are governed by the laws of the State of Mississippi. Any provision that purports to set venue outside of the State of Mississippi is deleted.

U.S. Const. Amend XI; Miss. Code Ann. § 11-11-3; Miss. Code Ann. § 11-45-1; City of Jackson v. Wallace, 196 So. 223 (1940); Miss. AG Op., Clark (June 2, 2002); Miss. AG Op., Nowak (November 19, 2005).

2. BSL does not waive its sovereign immunity. BSL shall only be responsible for liability resulting from the negligent actions of its officers, agents, and employees acting within the course and scope of their official duties.

Miss. Code Ann. § 11-46-1, et seq.

3. BSL does not waive its Constitutional Eleventh (11<sup>th</sup>) Amendment immunity.

U.S. Const. Amend. XI.

4. Any reference to BSL waiving its right to a trial by jury are deleted.

Miss. AG Op., Chamberlin (October 18, 2002).

5. BSL does not agree to any provisions wherein the credit of the State of Mississippi is pledged or loaned in aid of any person, association, or corporation.

Miss. Const. Art. 14 § 258; Miss. AG Op., Stringer (January 25, 2006).

6. Any reference to payment of attorney’s fees by BSL are deleted.

Miss. AG Op., Nowak (January 23, 2009); Miss. AG Op., Stringer

(January 25, 2006).

7. BSL does not agree to pay extra compensation, fees, or allowances after service rendered or contract made, or for any payment not authorized by law.

Miss. Const. Art. 4, § 96; Miss. AG Op., Stringer (January 25, 2006).

8. Any references to BSL limiting BSL's damages to the contract price or any other set amount are deleted.

Miss. Const. Art. 4 § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002).

9. Any references to BSL indemnifying or holding harmless the Contractor or any other party are deleted.

Miss. Const. Art. 4 § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002).

10. Any provisions limiting the time for BSL to pursue legal action are deleted.

Miss. Const. Art. 4 § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002).

11. Any reference to BSL waiving any cause of action it may have against Contractor or any other party as a result of Contractor's breach of the contract, or Contractor's own negligence or willful misconduct or the negligence or willful misconduct of Contractor's employees or agents are deleted.

Miss. Const. Art. 4 § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002).

12. Any reference to BSL limiting damages, remedies or waiving any claim are deleted.

Miss. Const. Art. 4 § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002).

13. Any provisions giving the Contractor exclusive control over litigation are deleted. BSL does not agree that Contractor may represent, prosecute or defend legal actions in the name of BSL.

14. Any references to BSL submitting to binding arbitration are deleted.

Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002)

15. With the exception of any expressed limitation of remedies for breach of implied warranties of merchantability and fitness for a particular purpose concerning computer software and services performed on computer hardware and computer software, which are sold between merchants,

any provisions which would limit the Contractor's liability to BSL or allow Contractor to waive any applicable warranties (express or implied) are deleted.

Miss. Const. Art. 4 § 100; Miss. Code Ann. §75-2-719; Miss. AG Op., Clark (June 2, 2002); Miss. AG Op., Chamberlin (October 18, 2002); Miss. AG Op., Long (February 22, 2009).

16. Any references to BSL limiting or waiving any common law warranty are deleted.

Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002).

17. BSL does not make any warranty.

Miss. Const. Art. 4, § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002).

18. BSL will deliver payments to Contractor. Any provision that requires BSL pay Contractor any late charges is governed by Miss. Code Ann. § 31-7-305.

19. BSL is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, Miss. Code Ann. § 25-61-1, et seq., and the Mississippi Accountability and Transparency Act of 2008, Miss. Code Ann. § 27-104-151, et seq.

20. Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Miss. Code Ann. § 71-11-1, et seq., and will register and participate in the status verification system for all newly hired employees. Any provision penalizing BSL for hiring an employee who works for the Contractor is deleted.

21. The continuance of any BSL contract is based on the availability of funds. Should there be no funds available for any succeeding funding period; the contract will be cancelled as of the end of the funding period with no further obligation on the part of BSL. This contract is cancellable with thirty (30) days' notice to the vendor at the end of the fiscal period if the event funds are not appropriated by the funding authority. (Any property covered by a lease shall be returned to lessor).

22. Any provision requiring BSL to name the contractor as an additional insured is deleted.

23. Neither party may assign its rights or delegate its duties under the contract without the prior written consent of the other party, which shall not be unreasonably withheld.

24. Contractor recognizes that BSL, as a political subdivision of the State of Mississippi, enters into this contract only to the extent authorized by Mississippi law.

25. Contractor acknowledges that the individual executing the contract on behalf of BSL is doing so only in his/her official capacity only, and to the extent that any provision contained in the

contract exceeds his/her authority, Contractor agrees that it will not look to that individual in his/her personal capacity or otherwise seek to hold him/her individually liable for exceeding such authority.

**CONTRACTOR**

By: \_\_\_\_\_  
(Original Signature of Principal or General Agent)  
NAME/TITLE \_\_\_\_\_  
COMPANY: \_\_\_\_\_  
DATE: \_\_\_\_\_

**CITY OF BAY ST. LOUIS, MISSISSIPPI**

By: Michael J. Favre, Mayor  
SIGNATURE: \_\_\_\_\_  
DATE: \_\_\_\_\_

## PERFORMANCE BOND

<b>Contractor</b> Name: _____ Address ( <i>principal place of business</i> ): _____ _____	<b>Surety</b> Name: _____ Address ( <i>principal place of business</i> ): _____ _____
<b>Owner</b> Name: <u>City of Bay St. Louis</u> Mailing address ( <i>principal place of business</i> ): 688 Highway 90 Bay St. Louis, MS 39520	<b>Contract</b> Description ( <i>name and location</i> ): <u>Bay St. Louis Unit Price Maintenance Contract for</u> <u>Roadways</u>  Contract Price: _____ Effective Date of Contract: _____
<b>Bond</b> Bond Amount: _____ Date of Bond: _____ <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 16	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <div style="text-align: center;"><i>(Signature)</i></div>	By: _____ <div style="text-align: center;"><i>(Signature)(Attach Power of Attorney)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>	Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

## 00925 PERFORMANCE BOND

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
  - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
  - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
  - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
  - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
  - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

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- 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
  - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
- 6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
- 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
  - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
  - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
- 12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
- 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such

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statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

### 14. Definitions

- 14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
  - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
  - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
  - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
  - 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. Modifications to this Bond are as follows: None.