

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 5 I

Council Meeting Date: August 20, 2019

ITEM TITLE: RESOLUTION

INTRODUCED BY: Mayor Andrew "FoFo" Gilich

CONTACT PERSON: E. Michael Leonard, CAO *eml*

Christy LeBatard, Director of the Engineering Department

SUMMARY EXPLANATION:

Resolution approving and authorizing entry into Supplemental Agreement No. One (1) to Agreement for 2019 Dredge Permit Project with Seymour Engineering, PLLC for Capital Project No. 1056: Sediment Removal Phase II

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract Minutes _____ Plans/Maps _____ Deed _____ Lease _____

Other (Specify): Exhibit A: Supplemental Agreement No. One (1)
Exhibit B: Standard Addendum

Submittal Authorization: Council President _____ Mayor

STAFF RECOMMENDATION: Staff recommends approval

COUNCIL ACTION: Motion By: _____ Second By: _____

Vote:	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>Other</u>	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>Other</u>
	Lawrence	___	___	___	Tisdale	___	___	___
	Gines	___	___	___	Glavan	___	___	___
	Newman	___	___	___	Barrett	___	___	___
	Deming	___	___	___				

ACTION TAKEN:

Resolution No.

RESOLUTION APPROVING AND AUTHORIZING ENTRY INTO SUPPLEMENTAL AGREEMENT NO. ONE (1) TO AGREEMENT FOR 2019 DREDGE PERMIT PROJECT WITH SEYMOUR ENGINEERING, PLLC FOR CAPITAL PROJECT NO. 1056: SEDIMENT REMOVAL PHASE II

WHEREAS, by Resolution No. 320-19, the governing authorities of the City of Biloxi (the "City") approved entry into that certain Agreement for 2019 Dredge Permit Project (the "Agreement") with Seymour Engineering, PLLC ("Seymour") for Capital Project No. 1056: Sediment Removal Phase II ("Project 1056");

WHEREAS, since entering the Agreement an addition site, known as the Linda Drive Bayou, has been identified as needing dredging;

WHEREAS, Supplemental Agreement No. One (1), attached hereto as Exhibit "A," addresses the need for dredging in the Linda Drive Bayou site and increases Seymour's compensation by \$7,200.00 in connection with this increased scope of work, resulting in a total contract value of \$53,900.00;

WHEREAS, the terms and conditions of the City's Standard Addendum to contracts, attached hereto as Exhibit "B," shall apply to Supplemental Agreement No. One (1), and

WHEREAS, it is the recommendation of E. Michael Leonard, Chief Administrative Officer, and Christy LeBatard, P.E., Director of Engineering that the City accept and enter into the Supplemental Agreement No. One (1) to the Agreement with Seymour for Project No. 1056.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, THAT:

Section 1: The findings, conclusions, and statements of fact contained in the foregoing preamble are hereby adopted, ratified, and incorporated herein.

Section 2: The Mayor is, on behalf of the City of Biloxi, hereby authorized to accept and execute Supplemental Agreement No. One (1), attached hereto as Exhibit "A", to the Agreement for 2019 Dredge Permit Project with Seymour Engineering, PLLC for Capital Project No. 1056: Sediment Removal Phase II.

Section 3: The Mayor is, on behalf of the City of Biloxi, hereby authorized to accept and execute the Standard Addendum to Supplemental Agreement No. One (1), attached hereto as Exhibit "B", with Seymour Engineering, PLLC for Capital Project No. 1056: Sediment Removal Phase II.

Section 4: This resolution shall take effect and be in force from and after adoption.

SEYMOUR ENGINEERING

Civil Engineers and Professional Land Surveyors



925 Tommy Munro Drive, Suite G
Biloxi, Mississippi 39532
Phone: 228-385-2350
Fax: 228-385-2353
Toll Free: 888-385-2350

Supplemental Agreement City of Biloxi/Seymour Engineering, PLLC 2019 Dredge Permit Project



BY _____ ORIGINAL *cu*

On May 21, 2019 the City of Biloxi (Client) and Seymour Engineering, PLLC., (Consultant) entered into an Agreement for Engineering Services to be provided by Consultant for Client on facilitating the required permitting for dredging the following locations; Site No. 1 Hiller Park Lake, Site No. 2 Cedar Lake Rd Canal, Site No. 3 Broadus/Cedar Lake Island Canal, Site No. 4 Savannah and Kennedy Ln Canals, Site No. 5 Beau Chene Canals and Site No. 6 Shady Pl / Riviere Vue Dr Canals located in Biloxi, MS.

The Agreement identified the following Scope of Work to be completed by Consultant to provide the Engineering Services for the proposed project.

Scope of Work - Phase 1 (Project Planning and Preliminary Engineering)

- Meet with City Officials to establish limits of proposed dredging.
- Prepare preliminary site plans for dredging Sites No. 1, 2, 3, 4, 5 & 6
- Facilitate Pre-Application Meeting with Mississippi Department of Marine Resources and the United States Army Corps of Engineers to review proposed dredge alignments and discuss required permitting.

Cost – Phase 1

- Phase 1 – Project Planning and Preliminary Engineering – Lump Sum (\$ 4,500.00)

Scope of Work - Phase 2 (Project Permitting per Site Location)

- Perform a Hydrographic Survey of proposed dredge alignment Sites No. 2, 3, 4, 5 & 6. City to provide existing topographic survey of Hiller Park Lake.
- Perform a Submerged Aquatic Vegetation (SAV) / Shell Fish Survey of proposed dredge alignments.
- Develop dredge alignment drawing, profiles and determine estimated quantities of dredging per alignment.
- Prepare and submit the Joint Application and Notification, Property Ownership Map and List, Project Vicinity Map, Agent Authorization, Environmental Assessment and Submerged Aquatic Vegetation (SAV) / Shell Fish report for each of the proposed sites.

Cost – Phase 2

- Site No. 1 Hiller Park Project – Lump Sum (\$ 6,385.00)
- Site No. 2 Cedar Lake Rd Canal – Lump Sum (\$ 6,310.00)
- Site No. 3 Broadus/Cedar Lake Island Canal – Lump Sum (\$ 7,060.00)
- Site No. 4 Savannah & Kennedy Ln Bayous – Lump Sum (\$ 7,480.00)
- Site No. 5 Beau Chene Canals – Lump Sum (\$ 7,095.00)
- Site No. 6 Shady Pl / Riviere Vue Dr Canals – Lump Sum (7,270.00)

As a result of review of the existing proposed dredge alignments with City Staff, Consultant was requested to add an additional site; Linda Dr Bayou to this Agreement for the purpose of performing the outlined Scope of Work already identified in Phase 1 and Phase 2. To expand the necessary work to add the proposed alignment, **Linda Dr. Bayou** for permitting the following costs are being requested as part of this Supplemental Agreement:

- Phase 1 – Project Planning and Preliminary Engineering – Lump Sum (\$ 700.00)
- Phase 2 – Project Permitting – Lump Sum (\$ 6,500.00)

Execution of this Supplemental Agreement authorizes work identified in Phase 1 - Project Planning and Preliminary Engineering for Linda Dr Bayou to be completed.

Note; The attached Task Order Agreement for Phase 2 Linda Dr. Bayou shall be executed by the City of Biloxi and Seymour Engineering, PLLC prior to any of the work identified in this Task Order Agreement Phase 2 being authorized to complete. It is understood that the City may, subject to requirements of permitting, enter into this Task Order Agreement - Phase 2 for Linda Dr. Bayou.

Note: If the DMR or USACE requests a; Wetland Mitigation Plan, Cultural/Archeological Survey, Sediment Testing or other item not included within this Agreement, a Supplemental Agreement to perform such shall be submitted for approval.

By Signing this Authorization or ordering the commencement of Services to be effective July 16, 2019 you are affirming that you are authorized to bind Client to the Terms and Conditions of this Agreement and have read and accepted the Terms and Conditions, including restrictions and limitations, as set forth in the Agreement and subsequent page of Additional Terms and Conditions.

SEYMOUR ENGINEERING, PLLC

CITY OF BILOXI

 7-2-19

Mark M. Seymour, Jr. P.E. Date
President

Andrew Gilich Date
Mayor, City Biloxi



City of Biloxi Standard Addendum

Whereas, the City of Biloxi, as a municipal corporation, has published these standard terms and conditions that will apply to all supplier, professional services and other vendor agreements.

Now, therefore, in consideration of mutual terms as described in the agreement between the parties (the "Contract"), the undersigned contracting party hereby agrees to the City of Biloxi standard terms and conditions, as follows:

1. Term / No Automatic Renewal: Unless otherwise specified in the Contract, the term of the Contract or any renewal term thereof shall not extend past the term of the current City Council of June 30, 2021. If the Contract does extend past that date, such contract will not be void, but voidable at the discretion of the following Council.
2. Renewal / Extension of Term / CPI: Any extension or renewal may be subject to approval by the Biloxi City Council and shall be subject to the terms of the City of Biloxi Standard Addendum that is in effect at that time. No CPI increase, if any, shall extend past June 30, 2021.
3. Governing Law: Mississippi law shall govern the interpretation of the Contract and any dispute that may arise between the parties.
4. Venue / Exclusive Jurisdiction: The courts located in Harrison County, Mississippi (Second Judicial District) shall have exclusive jurisdiction of any dispute between the parties. If one party initiates an action against the other or should a party seek any form of relief against the other, then said action shall be filed in Harrison County, Mississippi (Second Judicial District). Any business or person doing business with the City of Biloxi submits to the personal jurisdiction of the courts in Harrison County, Mississippi.
5. No Waiver of Warranties: Notwithstanding any provisions to the contrary that may be found in the Contract or any other supplemental terms that may be referenced therein, any provision that seeks to limit the City of Biloxi's recovery resulting from a breach of express or implied warranties shall be of no force or effect.
6. No Waiver of Damages: Notwithstanding any provisions to the contrary that may be found in the Contract or any other supplemental terms that may be referenced therein, any provision that seeks to limit the City of Biloxi's recovery in any manner shall be of no force or effect.
7. Arbitration: The City of Biloxi shall not be subject to the terms of any provision contained in the Contract or any supplemental terms that may seek to require the City of Biloxi to submit a dispute to arbitration; and, any such term(s) requiring same, shall be deemed to be of no force or effect as against the City of Biloxi.
8. Waiver of Jury Trial: The City of Biloxi shall not be subject to the terms of any provision contained in the Contract or any supplemental terms that may seek to waive its right to a jury trial; and any such term(s) requiring same, shall be deemed to be of no force or effect as against the City of Biloxi.

9. Force Majeure: Neither party shall be liable for failure to perform or delay in performing any obligation under the Contract if the failure or delay is caused by any circumstances beyond its reasonable control, including, but not limited to, acts of God, war, civil commotion or industrial dispute ("Force Majeure"). If such delay or failure continues for at least sixty (60) days, then either party may provide written notice to terminate the Contract; and, upon such termination, the parties will owe no further obligations to the other except with respect to any rights or obligations that may have accrued prior to termination

10. Conflict of Terms: To the extent there is a conflict between the terms of this Addendum and the term of the Contract or any supplemental terms thereof, the terms of this Addendum will control. Upon expiration or termination of the Contract, the terms of this Addendum shall survive and will apply with respect to any dispute that may exist between the parties.

11. Notices. All notices, Consents, waivers and other communications required or permitted by the Contract shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate addressee; or (b) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses and marked to the attention of the person (by name or title) designated below (or to such other address or person as a party may designate by notice to the other parties):

Contracting Party:

Seymour Engineering, PLLC
Attention: Mark M. Seymour, Jr
Address: 925 Tommy Munro Dr
Ste G, Biloxi, Ms 39532
Telephone: 228-380-2350 *

The City of Biloxi, Mississippi:
Attention: Mayor A.M. Gilich, Jr.
140 Lameuse Street
Biloxi, Mississippi 39530
Telephone: (228) 435-6254*

With a mandatory copy to:

City Attorney / Contract Manager
Post Office Box 429
Biloxi, Mississippi 39533
Telephone: (228) 435-6388*

* =all telephone numbers supplied herein are for the sake of convenience and the parties specifically agree that no notice may be served via telephone

Contracting Party:

Seymour Engineering, PLLC
By: [Signature]
Name: Mark M. Seymour, Jr
Title: President
Date: 7/2/19
Contract Reference: _____

The City of Biloxi, Mississippi:

By: _____
Name: A. M. Gilich, Jr.
Title: Mayor
Date: _____