CITY OF BILOXI
AGENDA ITEM
FACT SHEET

Item No.: 5 AA

Council Meeting Date: August 17, 2021

ITEM TITLE: RESOLUTION

INTRODUCED BY: Mayor Andrew "FoFo" Gilich

CONTACT PERSON: E. Michael Leonard, CAO

SUMMARY EXPLANATION:

Resolution authorizing entry into Standard Form of Agreement between Owner and Engineering for Professional Services with Seymour Engineering, PLLC for Zeta Project No. ZP007: Lighthouse Pier Reconstruction

Resolution ✓ **Ordinance** _____ **Public Hearing** _____ **Routine Agenda** _____

Exhibits for Review

Contract ✓ **Minutes** _____ **Plans/Maps** _____ **Deed** _____ **Lease** _____

Other (Specify): Exhibit A: Standard Form of Agreement
Exhibit B: Standard Addendum

Submittal Authorization: **Council President** _____ **Mayor** ✓

STAFF RECOMMENDATION: **Staff recommends approval**

COUNCIL ACTION: **Motion By:** _____ **Second By:** _____

Vote:	Councilmember	Yes	No	Other	Councilmember	Yes	No	Other
	Lawrence	___	___	___	Tisdale	___	___	___
	Gines	___	___	___	Glavan	___	___	___
	Newman	___	___	___	Barrett	___	___	___
	Deming	___	___	___				

ACTION TAKEN:

081721scon

Resolution No.

RESOLUTION AUTHORIZING ENTRY INTO STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEERING FOR PROFESSIONAL SERVICES WITH SEYMOUR ENGINEERING, PLLC FOR ZETA PROJECT NO. ZP007: LIGHTHOUSE PIER RECONSTRUCTION

WHEREAS, the City of Biloxi (the "City") created Zeta Project No. ZP007: Lighthouse Pier Reconstruction ("Project ZP007") in order to reconstruct the Lighthouse Pier following from Hurricane Zeta and mitigate possible future hurricane damages;

WHEREAS, the goals of Project ZP007 will require professional services to redesign the Lighthouse Pier;

WHEREAS, Seymour Engineering, PLLC ("Seymour") is qualified to perform the services required by Project ZP007 and has submitted the Standard Form of Agreement between Owner and Engineering for Professional Services (the "Agreement"), attached hereto as "Exhibit A," which defines the terms and conditions under which Seymour will be engaged;

WHEREAS, under the Agreement, Seymour will, in part, be compensated based on a percentage of the construction cost, in accordance with the FEMA Curve B incorporated into the Agreement;

WHEREAS, at current, construction is estimated to cost One Million Seven Hundred Thousand Dollars ($1,700,000.00), and estimated cost of Seymour's services is Three Hundred Thirty-Six Thousand Dollars ($336,000.00);

WHEREAS, upon receipt of construction bids and construction change orders, the value of the Agreement will be administratively adjusted based on the percentages established in the Agreement;

WHEREAS, there is sufficient funding available for the City's obligation under the

Agreement in the budget established for Project ZP007;

WHEREAS, the terms of the City's Standard Addendum to contracts, attached hereto as Exhibit "B," will apply to the Agreement; and

WHEREAS, it is the recommendation of E. Michael Leonard, Chief Administrative Officer, that the City enter into the Agreement with Seymour to provide professional services in connection with Project ZP007.

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

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

SECTION TWO: The Mayor is hereby authorized to accept and execute, on behalf of the City of Biloxi, the Standard Form of Agreement between Owner and Engineering for Professional Services, attached hereto as Exhibit "A," with Seymour Engineering, PLLC for professional services in connection with Zeta Project No. ZP007: Lighthouse Pier Reconstruction, and the City's Standard Addendum to Contracts, attached hereto as Exhibit "B."

SECTION THREE: This resolution shall take effect and be in force from and after adoption.

EXHIBIT A

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

This Standard Form of Agreement Between Owner and Engineer for Professional Services ("Agreement") between CITY OF BILOXI, ("OWNER" or "City of Biloxi") and SEYMOUR ENGINEERING, 925 Tommy Munro Drive, Suite G, Biloxi, Mississippi 39532 ("ENGINEER"). OWNER intends to replace the damaged Lighthouse Pier with more sustainable construction.

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

SECTION 1- BASIC SERVICES OF ENGINEER

1.1 General.

1.1.1. ENGINEER shall provide for OWNER professional engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional engineering representative for the Project, providing professional engineering consultation and advice and furnishing customary civil engineering services.

1.2. Preliminary Design Phase.

After written authorization to proceed with the Preliminary Design Phase, ENGINEER shall:

1.2.1 In consultation with OWNER determine the general scope, extent and character of the Project.

1.2.2 Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project. The Preliminary Design documents shall be prepared consistent with one (1) prime construction contract being awarded by the OWNER.

1.2.3 Advise OWNER if additional data or services of the types described in paragraph 3.4. are necessary and assist OWNER in obtaining such data and services.

1.2.4 Based on the information contained in the Preliminary Design documents, submit a revised Opinion of Probable Total Project Costs.

1.2.5 Furnish two (2) paper copies and an electronic copy of the above Preliminary Design documents and present and review them in person with OWNER.

1.3. Final Design Phase.

After written authorization to proceed with the Final Design Phase, ENGINEER shall:

1.3.1 On the basis of the accepted Preliminary Design documents and the revised opinion of probable Total Project Costs prepare for incorporation in the Contract Documents final drawings to show the general scope, extent and character of the work to be furnished and performed by Contractor (hereinafter called "Drawings") and Specifications (which will be prepared in conformance with the sixteen division format of the Construction Specifications Institute). The Contract Documents and Specifications shall be prepared for one (1) prime construction contract.

1.3.2 Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist OWNER in consultations with appropriate authorities.

1.3.3 Advise OWNER of any adjustments to the latest opinion of probable Total Project Costs caused by changes in general scope, extent or character or design requirements of the Project or Construction Costs. Furnish to OWNER a revised opinion of probable Total Project Costs based on the Drawings and Specifications.

1.3.4 Prepare for review and approval by OWNER, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders and assist in the preparation of other related documents.

1.3.5 Furnish two (2) copies and an electronic copy of the above documents and of the Drawings and Specifications and present and review them in person with OWNER

1.4 Bidding or Negotiating Phase.

After written authorization to proceed with the Bidding or Negotiating Phase, ENGINEER shall:

1.4.1 Assist OWNER in advertising for and obtaining bids or negotiating proposals for the contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences and receive and process deposits for Bidding Documents.

1.4.2 Issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.

1.4.3 Advise OWNER as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor (herein called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents.

1.4.4 Advise OWNER concerning and determine the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.

1.4.5 Attend any pre-bid conference, the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment, and services.

1.5. Construction Phase.

During the Construction Phase:

1.5.1 *General Administration of Construction Contract.* ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in Articles 1 through 17, inclusive, of the Standard General Conditions of the Construction Contract, No. 1910-8 (1983 edition) of the Engineers Joint Contract Documents Committee. The Standard General Conditions of the Construction Contract are subject to review, amendment and final approval by MDEQ prior to entry of any Construction Contract for purposes of incorporating the compliance requirements of the underlying grant and state law. All of OWNER's instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions except as otherwise provided in writing.

1.5.2 *Visits to Site and Observation of Construction.* In connection with observations of the work of Contractor(s) while it is in progress:

1.5.2.1. ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor(s)' work. In addition, ENGINEER shall provide the services of a Resident Project Representative (and assistants as agreed) at the site to assist ENGINEER and to provide more continuous observation of such work. Based on information obtained during such visits and on such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work.

1.5.2.2. The Resident Project Representative (and any assistants) will be ENGINEER's agent or employee and under ENGINEER's supervision. The duties and responsibilities of the Resident Project Representative (and assistants) are set forth in Exhibit B "Duties, Responsibilities and Limitation of Authority of Resident Project Representative."

1.5.2.3. The purpose of Engineer's visits to and representation by the Resident Project Representative (and assistants, if any) at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor(s) will conform generally to the Contract

Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct or have control over Contractor(s)' work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, ENGINEER can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' failure to furnish and perform their work in accordance with the Contract Documents.

1.5.3 *Defective Work.* During such visits and on the basis of such observations, ENGINEER may disapprove of or reject Contractor(s)' work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

1.5.4 *Interpretations and Clarifications.* ENGINEER shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.

1.5.5 *Shop Drawings.* ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions), samples and other data which Contractor(s) are required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

1.5.6 *Substitutes.* ENGINEER shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor(s), but subject to the provision of paragraph 2.2.2.

1.5.7 *Inspections and Tests.* ENGINEER shall have authority, as OWNER's representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testings and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

1.5.8 *Disputes between OWNER and Contractor.* Engineer shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.

1.5.9 *Applications for Payment.* Based on on-site observations as an experienced and qualified design professional, on information provided by the Resident Project Representative and on review of applications for payment and the accompanying data and schedules:

1.5.9.1. ENGINEER shall determine the amounts owing to Contractor(s) and recommend payment to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation). In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

1.5.9.2. By recommending any payment ENGINEER will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by ENGINEER to check the quality or quantity of Contractor(s)' work as it is furnished and performed beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. ENGINEER's review of Contractor(s)' work for the purposes of recommending payments will not impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or Contractor(s) compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and CONTRACTOR that might affect the amount that should be paid.

1.5.10 *Contractor(s)' Completion Documents.* ENGINEER shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor(s) in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests and approvals the results certified indicate compliance with, the Contract Documents); and shall transmit them to OWNER with written comments.

1.5.11 *Inspections.* ENGINEER shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor(s) and may give written notice to OWNER and the Contractor(s) that the work is acceptable (subject to any conditions

therein expressed), but any such recommendation and notice will be subject to the limitations expressed in paragraph 1.5.9.2.

1.5.12 *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractor's or supplier's agents or employees or any other persons (except ENGINEER's own employees and agents) at the site or otherwise furnishing or performing any of the Contractor(s)' work: however, nothing contained in paragraphs 1.5.1 thru 1.5.11 inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties and responsibilities assumed by ENGINEER in the Contract Documents.

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1. Services Requiring Authorization in Advance.

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.14, inclusive.

2.1.1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.1.2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.1.3. Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond ENGINEER's control.

2.1.4. Providing renderings or models for OWNER's use.

2.1.5. Preparing documents for alternate bids requested by OWNER for Contractor(s)' work which is not executed or documents for out-of-sequence work.

2.1.6. Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the project; evaluating processes available for licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER. (Value Engineer shall be considered Basic Service)

2.1.7. Furnishing services of independent professional associates and consultants for other than Basic Services (which include, but are not limited to, customary civil engineering); and providing data or services to the types described in paragraph 3.4 when OWNER employs ENGINEER to provide such data or services in lieu of furnishing the same in accordance with paragraph 3.4.

2.1.8. [NOT USED]

2.1.9. Services during out-of-town travel required of ENGINEER other than visits to the site or OWNER's office as required by Section 1.

2.1.10. Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services, except when such assistance is required to complete services called for in paragraph 5.2.2.2.

2.1.11. Providing any type of property surveys or related engineering services needed for the transfer of interests in real property and field surveys for design purposes and engineering surveys and staking to enable Contractor(s) to proceed with their work; and providing other special field surveys.

2.1.12. Preparation of operating, maintenance and staffing manuals to supplement Basic Services.

2.1.13. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project.

2.1.14. Additional services in connection with the Project, including services which are to be furnished by OWNER in accordance with Article 3, and services not otherwise provided for in this Agreement.

2.1.15. Obtaining environmental permits from state and federal agencies.

2.2. Required Additional Services.

When required by the Contract Documents in circumstances beyond ENGINEER's control, ENGINEER shall furnish or obtain from others, as circumstances require during construction and without waiting for specific authorization from OWNER, Additional Services of the types listed in paragraph 2.2.1. through 2.2.5. inclusive. These services are not included as part of Basic Services. ENGINEER shall advise OWNER promptly after starting any such Additional Services which will be paid for by OWNER as indicated in Section 5.

2.2.1. Services in making revisions to drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

2.2.2. Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.
2.2.3. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, and (4) default by any Contractor.

2.2.4. Services (other than Basic Services during the Construction Phase) in connection with any partial utilization of any part of the Project by OWNER prior to Substantial Completion.

2.2.5. Evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER:

3.1. Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

3.2. Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

3.3. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

3.4. Furnish to ENGINEER, as required for performance of ENGINEER's Basic Services the following:

3.4.1. Data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;

3.4.2. appropriate professional interpretations of all of the foregoing;

3.4.3. environmental assessment and impact statements;

3.4.4. property, boundary, easement, right-of-way, topographic and utility surveys;

3.4.5. property descriptions;

3.4.6. zoning, deed and other land use restriction; and

3.4.7. other special data or consultations not covered in Section 2; all of which ENGINEER may use and rely upon in performing services under this Agreement.

3.5. Provide field surveys to establish reference points for construction (except to the extent provided otherwise in Exhibit A "Further Description of Basic Engineering Services and Related Matters") to enable Contractor(s) to proceed with the layout of work.

3.6. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

3.7. Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

3.8. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

3.9. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing services as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

3.10. If OWNER designates a person to represent OWNER at the site who is not ENGINEER or ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person and the affect thereof on the duties and responsibilities of ENGINEER and the Resident Project Representative (and any assistants) will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.

3.11. If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

3.12. Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 3.7 through 3.11, inclusive and other costs of the types referred to in paragraph 1.2.6) so that ENGINEER may make the necessary findings to support opinions of probable Total Project Costs.

3.13. Attend the pre-bid conferences, bid opening, pre-construction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.

3.14. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or non-conformance in the work of any Contractor.

3.15. Furnish, or direct ENGINEER to provide, Additional Services as stipulated in paragraph 2.1. of this Agreement or other services as required.

3.16. Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 - PAYMENTS TO ENGINEER

4.1. Methods of Payment for Services and Expenses of ENGINEER.

4.1.1. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services as follows:

4.1.1.1. *One Prime Contract.* For one prime contract awarded for construction, materials and equipment for the Project, an amount equal to that expressed in Exhibit A, Payments to Engineer, for all Basic Services (except services of ENGINEER's Resident Project Representative (and assistants) furnished under paragraph 1.5.1).

4.1.1.2. *Resident Project Services.* For services of ENGINEER's Resident Project Representative (and assistants) furnished an amount equal to that expressed in Exhibit A, Payments to Engineer.

4.1.2. *For additional Services.* OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:

4.1.2.1. *General.* For Additional Services of ENGINEER's principals and employees engaged directly on the Project and rendered pursuant to paragraph 2.1. or 2.2. (except services as a consultant or witness under paragraph 2.1.13), at standard hourly rates for services rendered by principals and employees assigned to resident project representation, as shown in Exhibit C.

4.1.2.2. *Serving as a Witness.* For services rendered by ENGINEER's principals and employees as consultants or witnesses in any litigation, arbitration or other legal or administrative proceeding in accordance with paragraph 2.1.13. at the rate of $1,200 per day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, arbitration or proceeding will be on the basis provided in paragraph 4.1.2.1). Compensation for ENGINEER's independent professional associates and consultants will be on the basis provided in paragraph 4.1.2.1.

4.1.3. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.1.1. and 4.1.2. OWNER shall pay ENGINEER the actual costs of all Reimbursable Expenses incurred in connection with all Basic and Additional Services.

4.1.4. As used in this paragraph 4.1, the terms "Standard Hourly Rates" and "Reimbursable Expenses" have the meanings assigned to them in paragraph 4.4, and the term "Construction Cost" has the meaning assigned to it in paragraph 5.1. When Construction Cost is used as a basis for payment it will be based on one of the following sources with precedence in the order listed for work designed or specified by ENGINEER;

4.1.4.1 For completed construction work, the total cost of all work performed as designed or specified by ENGINEER.

4.1.4.2 For work designed or specified but not constructed, the lowest bona fide bid received from a qualified bidder for such work; or, if the work is not bid, the lowest bona fide negotiated proposal for such work.

4.1.4.3 For work designed or specified but not constructed upon which no such bid or proposal is received, the most recent estimate of Construction Cost, or, if none is available, ENGINEER's most recent opinion of probable Construction Cost.

Labor furnished by OWNER for the Project will be included in the Construction cost at current market rates including a reasonable allowance for overhead and profit. Materials and equipment furnished by OWNER will be included at current market prices. No deduction is to be made from Construction Costs on account of any penalty, liquidated damages, or other amounts withheld from payments to Contractor(s).

4.2 Times of Payments.

4.2.1. ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon ENGINEER's and OWNER's agreed upon estimate of the proportion of the total services actually completed at the time of billing. OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.

4.3. Other Provisions Concerning Payments.

4.3.1. In the event of termination by OWNER under paragraph 6.1 upon the completion of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis of Exhibit C for services rendered during that phase to date of termination by ENGINEER's principals and employees engaged directly on the Project. In the event of any such termination, ENGINEER also will be reimbursed for the charges of independent professional associates and consultants employed by ENGINEER to render Basic Services, and paid for all unpaid Additional Services, and unpaid Reimbursable Expenses, plus all termination, which, if termination is at Owner's convenience, shall include an amount computed as a percentage of total compensation for Basic Services earned by ENGINEER to date of termination, as follows:

20% if termination occurs after commencement of the Preliminary Design Phase but prior to commencement of the Final Design Phase; or

10% if termination occurs after commencement of the Final Design Phase.

4.3.2. Records of ENGINEER's Standard Hourly Rates pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting principles. Copies will be made available to OWNER at cost on request prior to final payment for ENGINEER's services.

4.3.3. Standard Hourly Rates are subject to a rate increase of five (5) percent following each full calendar year during the term of this Agreement.

4.4. Definitions.

4.4.1 The Standard Hourly Rates used as a basis for payment mean salaries and wages (basic and incentive) with overhead factors paid to all ENGINEER's personnel engaged directly on the Project, including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel: plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers compensation, health and retirement benefits, sick leave, vacation and holiday and other group benefits. For the purposes of this Agreement, the principals of ENGINEER and their current Standard Hourly Rates are:

Mark M. Seymour, Jr. $225/hour

4.4.2 Reimbursable Expenses mean the actual expenses incurred by ENGINEER or ENGINEER's independent professional associates or consultants, directly or indirectly in connection with the Project, such expenses for: transportation and subsistence incident thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition those required under Section 1; and, if authorized in advance by OWNER, overtime work requiring higher than regular rates.

4.4.2.1. Reimbursables should not include (i) travel expenses from the Engineer's office to site, (ii) expenses of the Engineer's principal office and other offices other than the site office, (iii) costs due to the fault or negligence of or failure to comply with the requirements of the Agreement by the Engineer or (iv) federal, state or local income or franchise taxes.

SECTION 5 - OPINION OF PROBABLE COST

5.1. Construction Cost.

The construction cost of the entire Project (herein referred to as Construction Cost) means the total cost to OWNER of those portions of the entire Project designed and specified by ENGINEER, but it will not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or

compensation for or damages to, properties unless this Agreement so specifies, or will it include OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to paragraphs 3.7 through 3.11, inclusive.

5.2. Opinions of Cost.

5.2.1 Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s) methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER. If prior to the Bidding or Negotiating Phase OWNER wishes greater assurance as to Total Project or Construction Costs, OWNER shall employ an independent cost estimator as provided in paragraph 3.9.

5.2.2. Based on the Construction Cost limit established above, the following will apply:

5.2.2.1. ENGINEER will be permitted to determine what types of materials, equipment and component systems are to be included in the Drawings and Specifications and to make reasonable adjustments in the general scope, extent and character of the Project to bring it within the cost limit.

5.2.2.2. If the lowest bona fide proposal or bid exceeds the established Construction Cost limit, OWNER shall (1) authorize negotiating or rebiddings the Project within a reasonable time, and/or (2) cooperate in revising the Project's general scope, extent or character to the extent consistent with the Project's requirements and within sound engineering practices. In the case of (2), ENGINEER shall modify the Contract Documents as necessary to bring the Construction Cost within the cost limit.

SECTION 6 - GENERAL CONSIDERATION

6.1. Termination.

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

6.2. Reuse of Documents.

All documents including Drawings and Specifications prepared or furnished by ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant of this Agreement are instruments of service in respect of the Project and ENGINEER shall retain ownership and property interest therein whether or not the Project is completed. OWNER may make and retain

copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaption by ENGINEER for the specified purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates or consultants, and OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's independent professional associates and consultants from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

6.3. Insurance.

6.3.1. ENGINEER shall procure and maintain professional liability insurance for protection from claims arising out of professional services caused by a negligent error, omission, or act for which the insured is legally liable; such professional liability insurance shall provide coverage in the amount of $1,000,000. ENGINEER shall deliver to OWNER a certificate evidencing the assurance of such a policy.

6.4. Controlling Law.

This Agreement is to be governed by the law of the State of Mississippi.

6.5. Successors and Assigns.

6.5.1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 6.5.2. that assigns of OWNER and ENGINEER) are hereby bound to the other party

to this Agreement and to the partner successors, executors, administrators, and legal representatives (and said assigns) of such other party, respect of all covenants, agreements, and obligations of this Agreement.

6.5.2. Neither OWNER nor ENGINEER shall assign sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandate by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in and written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

SECTION 7 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES.

7.1 This Agreement is subject to the following special provisions.

7.1.1 The Preliminary Design, Final Design and Construction Phases of this Contract between the City of Biloxi and Seymour Engineering, are subject to the availability and amount of funding for this Project.

7.2 The following Exhibits are attached to and made a part of this Agreement:

7.2.1 Exhibit A – Payments to Engineer, consisting of 2 pages.

7.2.2 Attachment to Exhibit A Payments to Engineer – "Curve B" Compensation for Basic Services, consisting of 1 page.

7.2.3 Exhibit B – Duties, Responsibilities and Limitations of Authority of Resident Project Representative consisting of 5 pages.

7.2.4 Exhibit C – Seymour Engineering, Inc. Man-Hour Fee Schedule, consisting of 1 page.

7.3 This Agreement, together with the Exhibits and Schedules, identified above constitute the entire agreement between OWNER and ENGINEER and superseded all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or cancelled by a duly executed written instrument.

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

_____ _____

Date

OWNER:

City of Biloxi

ADDRESS FOR GIVING NOTICES:
Post Office Box 429
Biloxi, Mississippi

_____ _____

Date

ENGINEER:

Mark M. Seymour, Jr., P.E.
Seymour Engineering

ADDRESS FOR GIVING NOTICES:
925 Tommy Munro Drive
Suite G
Biloxi, Mississippi 39532

EXHIBIT A
TO AGREEMENT BETWEEN OWNER
AND ENGINEER FOR PROFESSIONAL SERVICES,
Dated _____, 2021 (for use with No. 1910-1, 1984 Edition).

PAYMENTS TO ENGINEER

1. This is an exhibit attached to, made a part of and incorporated by reference into the Agreement made on _____, 2021 between the CITY OF BILOXI, (OWNER) and SEYMOUR ENGINEERING (ENGINEER) providing for professional engineering services.

ADDITIONAL SERVICES:

A. Marine Survey

Perform a marine survey to verify existing water depths and structure locations.

COST: $2,000.00

B. Marine Geotechnical Investigation

Perform a marine geotechnical investigation of existing ground conditions to support a project for the approved conceptual design and scope of work.

COST: $30,000.00

C. Department of Marine Resources (DMR)/Corps of Engineers Permit (USACE)

1. Prepare and submit the required Joint Application to the Mississippi Department of Marine Resources and the United States Army Corps of Engineers to secure the necessary permitting approval for the approved project scope.

Note: If DMR/USACE requests a Mitigation Plan, or other items not included within this Agreement, a Supplemental Agreement to perform such shall be submitted for approval.

COST: $12,500.00

D. Federal Emergency Management Agency (FEMA)/Mississippi Emergency Management Agency (MEMA) Approvals

Work with the designated City Representative and FEMA/MEMA to define a final scope for the new pier facility.

COST: $3,500.00

BASIC SERVICES:

A. Engineering Design

Construction drawings and specifications will be prepared for the construction of the new pier structure.

B. Construction Administration

1. Assist City Staff on receiving and opening of submitted bids
2. Review submitted bids and provide recommendation of project award
3. Facilitate Contract approval between City and Contractor
4. Perform limited work site visits
5. Review and approve material submittals
6. Review and approve required shop drawings
7. Review and submit for approval Contractor's Pay Applications
8. Prepare and submit for approval Contractual Change Orders
9. Perform Final Inspection and Project Closeout

COST: The Basic Engineering Fee shall be computed in accordance with "Public Assistance Guide FEMA – Curve B" (See Attachment to Exhibit A). To establish a fee structure, the Preliminary Construction Budget of $1,700,000.00 shall be utilized. The final Design/Construction Administration fees will be adjusted to reflect the Final Construction Cost.

ESTIMATED COST: $176,600.00 (Based on FEMA curve B and construction budget of $1,700,000)

C. Resident Project Representative

ENGINEER shall furnish a Resident Project Representative (RPR), in observing performance of the work of Contractor. (See Exhibit **B)**

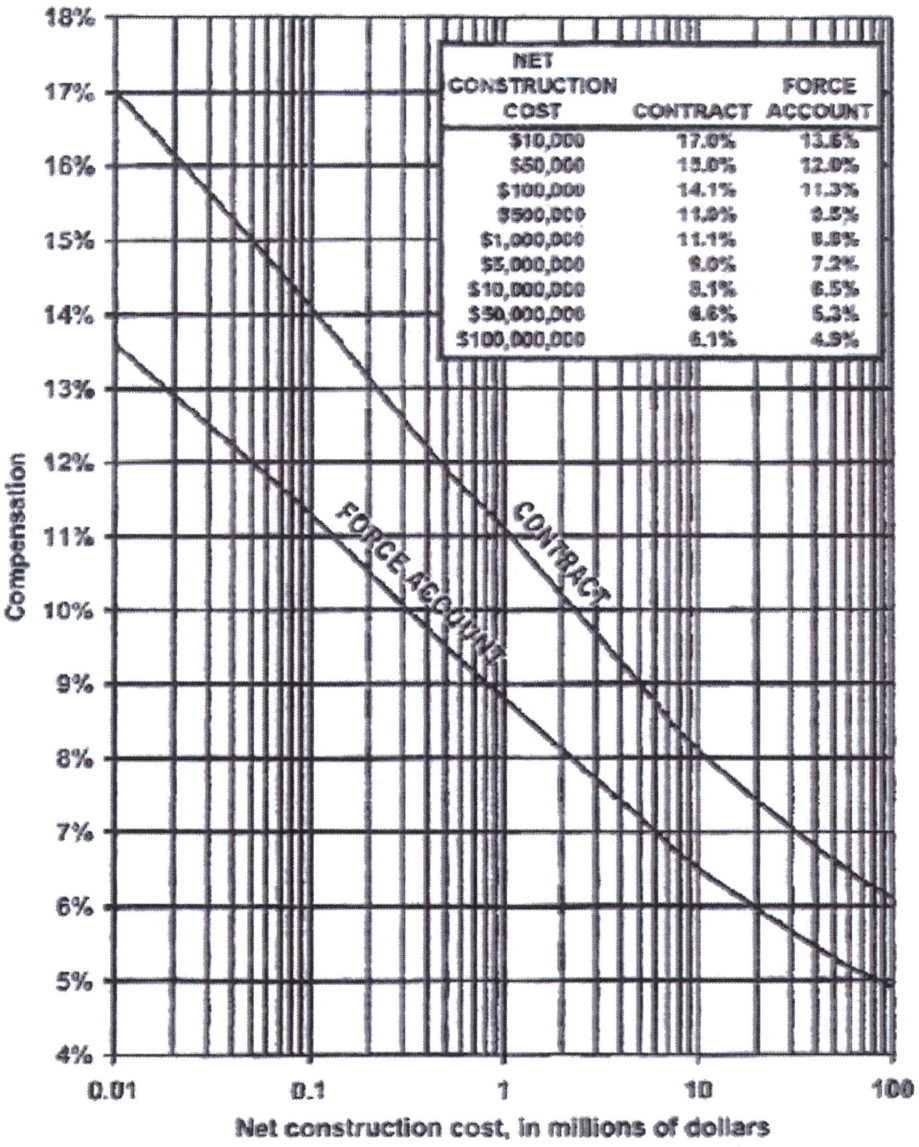
COST: $112,000.00

ESTIMATED TOTAL COST: $336,600.00 (Based on FEMA curve B and construction budget of $1,700,000)

ATTACHMENT TO EXHIBIT A
PAYMENTS TO ENGINEER

Engineering and Design Services of Average Complexity

CURVE B, COMPENSATION FOR BASIC SERVICES EXPRESSED AS A PERCENTAGE OF CONSTRUCTION COST FOR PROJECTS OF AVERAGE COMPLEXITY



NET CONSTRUCTION COST	CONTRACT	FORCE ACCOUNT
$10,000	17.0%	13.6%
$50,000	15.0%	12.0%
$100,000	14.1%	11.3%
$500,000	11.9%	9.5%
$1,000,000	11.1%	8.9%
$5,000,000	9.0%	7.2%
$10,000,000	8.1%	6.5%
$50,000,000	6.6%	5.3%
$100,000,000	6.1%	4.9%

EXHIBIT B
TO AGREEMENT BETWEEN OWNER
AND ENGINEER FOR PROFESSIONAL SERVICES,
(for use with No. 1910-1. 1984 Edition)

A LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE

This is an Exhibit attached to, made a part of and incorporated by reference with the Agreement between the CITY OF BILOXI. (OWNER) and SEYMOUR ENGINEERING (ENGINEER) providing for professional engineering services.

ENGINEER shall furnish a Resident Project Representative (RPR), assistants and other field staff to ENGINEER in observing performance of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants. ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. GENERAL

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of the ENGINEER.

B. DUTIES AND RESPONSIBILITIES OF RPR

1. Schedules: Review the progress schedules, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.

2. Conferences and Meetings: Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project related meetings, and prepare and circulate copies of minutes thereof.

3. Liaison:

   a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.

   b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

4. Shop Drawings and Samples:

   a. Record date of receipt of Shop Drawings and samples.

   b. Receive samples which are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of samples for examination.

   c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.

5. Review of Work, Rejection of Defective Work, Inspections and Tests:

   a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.

   b. Report to ENGINEER whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

   c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.

d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.

6. Interpretation of Contract Documents: Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.

7. Modifications: Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.

8. Records

a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.

b. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.

c. Record names, addresses and telephone numbers of all CONTRACTORS, subcontractors and major suppliers of materials and equipment.

9. Reports

a. Furnish ENGINEER periodic reports as required of progress of the Work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.

b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.

c. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to ENGINEER Change Orders, Work Directive Changes, and Field Orders.

d. Report immediately to ENGINEER and OWNER upon the occurrence of any accident.

10. Payment Requests: Review applications for payment with CONTRACTOR for compliance with the established procedures for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site, but not incorporated in the Work.

11. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.

12. Completion

a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.

b. Conduct final inspection in the company of ENGINEER, OWNER and CONTRACTOR and prepare a final list of items to be completed or corrected.

c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. LIMITATIONS OF AUTHORITY - Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.

2. Shall not exceed limitations of ENGINEER's authority as set forth in the Contract Documents.

3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors or CONTRACTOR's superintendent.

4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advise or directions are specifically required by the Contract Documents.

5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.

6. Shall not accept Shop Drawings or sample submittals from anyone other than Contractor.

7. Shall not authorize OWNER to occupy the Project in whole or in part.

8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

EXHIBIT C – HOURLY RATES

Principal Engineer (P.E.)	$200.00/Hour
Senior Structural/Civil Engineer (P.E.)	$170.00/Hour
Engineer (P.E.)	$160.00/Hour
Senior Project Manager	$150.00/Hour
Project Manager	$130.00/Hour
Engineer (E.I.T.)	$130.00/Hour
Senior Engineering Technician	$110.00/Hour
Engineering Technician/Co-Op	$60.00/Hour
Environmental Scientist	$110.00/Hour
Technician/Inspector	$85.00/Hour
Design/CADD Technician	$115.00/Hour
Draftsman (CADD)	$90.00/Hour
Administrative Assistant/Specifications Technician	$70.00/Hour
Clerical	$50.00/Hour
Survey Technician (P.L.S.)	$120.00/Hour
Survey Crew Chief	$75.00/Hour
Survey Crew (Two-Man)	$145.00/Hour
Survey Crew (Three-Man)	$155.00/Hour
Survey Crew (Global Positioning System)	$160.00/Hour
Hydrographic Survey Crew	$175.00/Hour
Equipment/Drone	$500.00/Day

REIMBURSABLE

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

EXHIBIT B

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 existing City Council. 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: 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.

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 deem 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 deem 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, epidemic, pandemic, 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. Non-Discrimination: All persons having a contract with the City of Biloxi must adhere to the City's policy concerning non-discrimination on the basis of race, color, religion, sex, age, sexual orientation, gender identity, national origin, veteran or disability status.

12. 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 Seymour

Address: 925 Tommy Munro Drive, Suite G

Biloxi, MS 39532

Telephone: (228) 385-2350 *

Email: mark@ seymoureng.com *

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 and email addresses supplied herein are for the sake of convenience and the parties specifically agree that no notice may be served via telephone or email

Contracting Party:

Seymour Engineering, PLLC

By: _____
Name: Mark Seymour
Title: _____
Date: _____

The City of Biloxi, Mississippi:

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

Contract Reference: _____

Updated as of: August 2, 2021