

**CITY OF BILOXI  
AGENDA ITEM  
FACT SHEET**

Item No.: 5 N

Council Meeting Date: August 5, 2025

**ITEM TITLE:** RESOLUTION

**INTRODUCED BY:** Mayor Andrew "FoFo" Gilich

**CONTACT PERSON:** Richard Weaver, Chief Administrative Officer

Christy LeBatard, Director of Engineering

**SUMMARY EXPLANATION:**

Resolution accepting the bid of Continental Flooring Company and authorizing entry into a Construction Agreement for Capital Project No. 1107: Saenger Theatre Interior Repairs

Resolution ✓ Ordinance \_\_\_\_\_ Public Hearing \_\_\_\_\_ Routine Agenda \_\_\_\_\_

**Exhibits for Review**

Contract ✓ Minutes \_\_\_\_\_ Plans/Maps \_\_\_\_\_ Deed \_\_\_\_\_ Lease \_\_\_\_\_

**Other (Specify):** Exhibit A: Bid

Exhibit D: Standard Addendum

Exhibit B: Recommendation

Exhibit C: Construction Agreement

**Submittal Authorization:** Council President \_\_\_\_\_ Mayor ✓

**STAFF RECOMMENDATION:** Staff recommends approval

**COUNCIL ACTION:** Motion By: \_\_\_\_\_ Second By: \_\_\_\_\_

<u>Vote:</u>	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>AFR</u>	<u>ABST</u>	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>AFR</u>	<u>ABST</u>
	Gray	_____	_____	_____	_____	Tisdale	_____	_____	_____	_____
	Marshall	_____	_____	_____	_____	Glavan	_____	_____	_____	_____
	Nail	_____	_____	_____	_____	Shoemaker	_____	_____	_____	_____
	Creel	_____	_____	_____	_____					

**ACTION TAKEN:**

080525icon

Resolution No.

RESOLUTION ACCEPTING THE BID OF CONTINENTAL FLOORING COMPANY AND  
AUTHORIZING ENTRY INTO A CONSTRUCTION AGREEMENT FOR CAPITAL  
PROJECT NO. 1107: SAENGER THEATRE INTERIOR REPAIRS

WHEREAS, in accordance with §31-7-13 of the Mississippi Code of 1972, the City of Biloxi (the “City”) advertised for competitive bids for construction associated with Capital Project No. 1107: Saenger Theatre Interior Repairs (“Project 1107”), and received such bids on July 22, 2025;

WHEREAS, the City’s selection committee convened on July 31, 2025, and determined that Continental Flooring Company (“Continental”) submitted the lowest and best bid for carpet tiles, attached hereto as Exhibit “A,” in the amount of Seventy-Three Thousand One Hundred and 00/100 Dollars (\$73,100.00), as indicated in the recommendation attached hereto as Exhibit “B”;

WHEREAS, Continental’s bid package included an alternate bid (“Alternate No. 1”) in the amount of Sixty-Nine Thousand Ninety-Nine and 00/100 Dollars (\$69,099.00) for broadloom carpet, which is not being awarded;

WHEREAS, the City’s cost estimate/construction allocation for Project 1107 was One Hundred Sixty-Five Thousand and 00/100 Dollars (\$165,000.00);

WHEREAS, the unencumbered budget amount available to complete construction for Project 1107 is sufficient to award Continental a contract for the bid amount of Seventy-Three Thousand One Hundred and 00/100 Dollars (\$73,100.00);

WHEREAS, the bids have been reviewed and checked by the Design Engineer and the City’s Engineering Department and no discrepancies in the low bid were noted;

WHEREAS, the terms of the City’s Standard Addendum to contracts, attached hereto as Exhibit “D,” will apply to the Agreement; and

WHEREAS, it is the recommendation of Christy LeBatard, Director of Engineering, that the City award Continental the Construction Agreement, attached hereto as Exhibit "C," for the total contract value of Seventy-Three Thousand One Hundred and 00/100 Dollars (\$73,100.00) for carpeting associated with Project 1107.

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 Continental Flooring Company's bid, for a total amount of Seventy-Three Thousand One Hundred and 00/100 Dollars (\$73,100.00), for Capital Project No. 1107: Saenger Theatre Interior Repairs.

SECTION THREE: The Mayor, on behalf of the City of Biloxi, is hereby authorized to execute the Construction Agreement, attached hereto to Exhibit "C," with Continental Flooring Company for Capital Project No. 1107: Saenger Theatre Interior Repairs and the City's Standard Addendum, attached hereto as Exhibit "D."

SECTION FOUR: Upon adoption of this resolution, the City's Contract Manager, as the Mayor's designee, is hereby authorized to issue the Notice of Award to Continental Flooring Company for the Construction Agreement.

SECTION FIVE: After such time that all required contract documents have been executed and construction is ready to proceed, the City's Department of Engineering, as the Mayor's designee, is hereby authorized to issue the Notice to Proceed to Continental Flooring Company.

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



**#13027**

RFP - Saenger Carpeting

Received July 22, 2025 4:36pm CDT

## **Continental Flooring Company**

**Certificate of Resp # 09443-SC**

Contact	Jenny Brown
Address	9319 N. 94th Way Suite 1000 Scottsdale, AZ 85258
Phone	800-825-1221
Email	frontdesk@continentalflooring.com

## **Attachments**

 SaengerCarpetingBOD 7-23-2025.pdf (1.5 MB)

Continental Flooring Company  
9319 N. 94th Way, Suite 1000  
Scottsdale, Arizona 85258  
1-800-825-1221

The following is my (our) proposal:

OPTION 1 – Broadloom carpeting, including all labor, materials and equipment necessary for a complete installation

FOR THE LUMP SUM BID OF (\$ 69,099.00 ) Dollars

Sixty Nine Thousand Ninety Nine

Dollars

(Amount in Words)

OPTION 2 – Carpet tiles, including all labor, materials and equipment necessary for a complete installation

FOR THE LUMP SUM BID OF (\$ 73,100.00 ) Dollars

Seventy Three Thousand One Hundred

Dollars

(Amount in Words)

In case of any discrepancy in the total sum above, the amount in words will govern. The sum total given is subject to verifications of the correctness of extensions and amounts given.

The City will award a contract for only one of the two options listed above.

PROPOSED NUMBER OF DAYS FROM NOTICE TO PROCEED TO COMPLETION:

30

Days

Images of the proposed design, color, and pattern of carpeting shall be attached to proposal.

Revised: 4/2/01

**CITY OF BILOXI PROJECT  
NON-COLLUSION, DEBARMENT/INELIGIBLE  
CERTIFICATION  
(Execute in duplicate)**

ARIZONA  
State of Mississippi  
County of Maricopa

I, Christopher L. Coleman  
(Name of person signing certification)

individually, and in my capacity as President of  
Continental Flooring Company do hereby certify  
(Name of Firm, Partnership, or Corporation)

under penalty of perjury under the laws of the United States and the State of Mississippi that  
Continental Flooring Company, Bidder on Project  
(Name of Firm, Partnership, or Corporation)

No. \_\_\_\_\_, in Harrison County, Mississippi, 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 corporate officers or principal owners.

Except as noted hereafter, it is further certified that said legal entity and its corporate officers, principal owners, managers, auditors and others in a position of administering federal funds:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction; 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 Item (b) of this subsection; and



# THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A310

## Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we

**Continental Flooring Company**  
9319 N. 94<sup>th</sup> Way, Suite 1000, Scottsdale, AZ 85258

(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called the Principal, and  
**Employers Mutual Casualty Company**  
P.O. Box 712, Des Moines, IA 50306

(Here insert full name and address or legal title of Surety)

a corporation duly organized under the laws of the State of Iowa  
as Surety, hereinafter called the Surety, are held and firmly bound unto  
**City of Biloxi**  
140 Lamouse Street  
Biloxi, MS 39530

(Here insert full name and address or legal title of Owner)

as Obligor, hereinafter called the Obligor, in the sum of **Five Percent of Amount Bid (5%)**

for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for

**Saenger Carpeling, Project No. 1107**

(Here insert full name, address and description of project)

NOW, THEREFORE, if the Obligor shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligor in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligor the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligor may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 3<sup>rd</sup> day of July, 2025

(Witness)

*Melanie Coker*  
(Witness)

**Continental Flooring Company**  
Principal (Seal)

By: Christopher L. Coleman, President  
(Title)

**Employers Mutual Casualty Company**  
(Surety) (Seal)

By: Joseph A. Clarken III  
(Title)

Joseph A. Clarken, III /Attorney-in-Fact



# POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

## KNOW ALL MEN BY THESE PRESENTS, that:

1. Employers Mutual Casualty Company, an Iowa Corporation
2. EMCASCO Insurance Company, an Iowa Corporation
3. Union Insurance Company of Providence, an Iowa Corporation

4. Illinois EMCASCO Insurance Company, an Iowa Corporation
5. Dakota Fire Insurance Company, a North Dakota Corporation
6. EMC Property & Casualty Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

**JOSEPH A. CLARKEN, III**

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the Bid Bond

Any and All Bonds

and to bind each Company thereby as fully and to the same extent as if such Instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

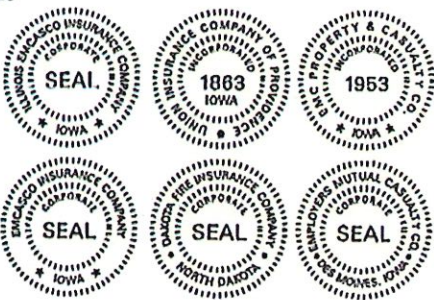
## AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

**RESOLVED:** The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 22nd day of September, 2022.

Seals



*Scott R. Jean*  
 Scott R. Jean, President & CEO  
 of Company 1; Chairman, President  
 & CEO of Companies 2, 3, 4, 5 & 6

*Todd Strother*  
 Todd Strother, Executive Vice President  
 Chief Legal Officer & Secretary of  
 Companies 1, 2, 3, 4, 5 & 6

On this 22nd day of September, 2022 before me a Notary Public in and for the State of Iowa, personally appeared Scott R. Jean and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the CEO, Chairman, President, Executive Vice President, Chief Legal Officer and/or Secretary, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Scott R. Jean and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2025.

*Kathy Loveridge*  
 Notary Public in and for the State of Iowa

## CERTIFICATE

I, Ryan J. Springer, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 22nd day of September, 2022, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 3rd day of July, 2025  
*Ryan J. Springer* Vice President



Revised: 06/09/2017

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**CITY OF BILOXI PROJECT  
CONTRACTOR PROPOSAL FORM**

PROPOSAL: SAENGER CARPET - PROJECT NO. 1107

BID OF: Continental Flooring Company

Contractor (corp./partnership, individual)  
9319 N. 94th Way, Suite 1000, Scottsdale, Arizona 85258

Address

Certificate of Responsibility No. 09443-SC

TO: The CITY OF BILOXI  
P.O. Box 429  
Biloxi, Mississippi 39533

**TO WHOM IT MAY CONCERN:**

The bidder, in compliance with your invitation for bids for **SAENGER CARPET, PROJECT NO. 1107**, in accordance with these plans and specifications prepared by the City Engineer of the CITY OF BILOXI, having examined the Drawings, Specifications, and related documents, the site of the proposed work and being familiar with all the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to do all the work and furnish all labor, materials, equipment, fuel and supplies and to construct the project in the manner specified. The bidder understands that the quantities mentioned herein are approximate only and are subject to either increase or decrease, and hereby proposes to perform any increased or decreased quantities of work at the unit prices bid, in accordance with the above and at the time set forth.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in the written "Notice to Proceed" from the CITY OF BILOXI and to fully complete the project within sixty (60) calendar days thereafter as stipulated in the specifications. For failure to complete the work on time, the Bidder further agrees to pay liquidated damages in accordance with the Specifications, after the 60 calendar days designated for completion of the work.

Bidder acknowledges receipt of and has added to and made a part of the proposal the following addendum (addenda):

Addendum No. <u>1</u>	Dated <u>6/25/2025</u>
Addendum No. <u>2</u>	Dated <u>6/26/2025</u>
Addendum No. <u>3</u>	Dated <u>6/27/2025</u>
Addendum No. <u>4</u>	Dated <u>7/11/2025</u>

TOTAL ADDENDA: 4

(Must agree with total addenda issued prior to opening of bid)

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Proposal Form

1 of 4

PROPOSAL FORM (Continued)

The Bidder understands that the CITY reserves the right to reject any or all bids and to waive informalities in the bidding.

The Bidder agrees that his bid shall be good and may not be withdrawn for a period of sixty (60) calendar days after the scheduled closing time for receiving bids, unless the City and contractor mutually agree upon a different period.

Attached hereto is a Proposal Guaranty consisting of a certified check, cashier's check or Bid Bond in the amount as required in the Advertisement (or, by law).

The bidder agrees to provide all "force account or extra work" that may be required on the basis provided in the Specifications and to give such work their personal attention in order to see that it is economically performed. Any changes from the original contract items shall be incorporated into the project by a change order.

The Bidder further proposes to execute the attached contract agreement (Section 902) and all other Proposal Documents (Section 905) as soon as the work is awarded to them and shall begin and complete the work within the time limits provided for in the Specifications and Advertisement. The Bidder also proposes to execute the attached payment and performance bond (Section 903) or other city approved form(s) in an amount not less than one hundred percent (100%) of the total of the work, but shall also guarantee the excellence of both workmanship and materials until the work is finally accepted.

The bid security/proposal guaranty attached in the form of a certified check, cashier's check or bid bond in the sum of five percent (5%) of the amount bid is to become the property of the CITY OF BILOXI in the event the Bidder fails to execute the contract and furnish all other required security within ten (10) days after notice of award, the amount of this check (or bid bond) will be forfeited to the CITY as liquidated damages arising out of the Bidder's failure to execute the contract as proposed. It is understood that in case the Bidder is not awarded with work, the check will be returned as provided in the Specifications.

IN TESTIMONY WHEREOF, the Bidder has hereunto affixed his legal signature on this,

22 day of July, 2025.

Respectfully submitted, Continental Flooring Company

Contractors

By:

Title: Christopher L. Coleman, President

Address: 9319 N. 94th Way, Suite 1000

Scottsdale, Arizona 85258

PROPOSAL FORM (Continued) \_\_\_\_\_

(To be filled in if a corporation)

Our corporation is chartered under the Laws of the State of Arizona and the names, titles and business addresses of the executives are as follows:

See attached	
_____ President	_____ Address
_____ Secretary	_____ Address
_____ Treasurer	_____ Address





9319 N 94<sup>th</sup> Way Ste 1000  
Scottsdale AZ 85258  
(480) 949-8509 • (800) 825-1221  
FAX (480) 945-2603  
<http://www.continentalflooring.com>

**LIST OF OWNERS, DIRECTORS AND OFFICERS**

NAME	ADDRESS & PHONE	TITLE HELD
Christopher L. Coleman	9319 N. 94 <sup>th</sup> Way, Suite 1000 Scottsdale, Arizona 85258 480.949.8509	Owner/Director, President
Lisa M. Coleman	9319 N. 94 <sup>th</sup> Way, Suite 1000 Scottsdale, Arizona 85258 480.949.8509	Owner/Director, Secretary/Treasurer
Gerald F. McMahon	9319 N. 94 <sup>th</sup> Way, Suite 1000 Scottsdale, Arizona 85258 480.949.8509	Owner Assistant Secretary Vice President ~ Operations
Bruce A. Kiger	9319 N. 94 <sup>th</sup> Way, Suite 1000 Scottsdale, Arizona 85258 480.949.8509	Vice President ~ Finance



- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or Local) terminated for cause or default.

Initial here " \_\_\_\_\_ " if exceptions are attached and made a part thereof. Any exceptions shall address to whom it applies, initiating agency and dates of such action.

Note: Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The bidder further certifies that the certification requirements contained in Section XI of Form FHWA 1273, will be or have been included in all subcontracts, material supply agreements, purchase orders, etc. except those procurement contracts for goods or services that are expected to be less than the Federal procurement shall purchase fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently \$25,000) which are excluded from the certification requirements.

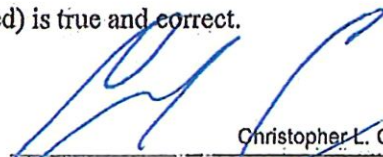
The bidder further certified, to the best of his or her knowledge and belief, that:

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

The certification contained in (1) and (2) above is a material representation of fact upon which reliance is placed and a prerequisite imposed by Section 1352, Title 31, U.S. Code prior to entering into this contract. Failure to comply shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000. The bidder shall include the language of the certification in all subcontracts exceeding \$100,000 and all subcontractors shall certify and disclose accordingly.

All of the foregoing and attachments (when indicated) is true and correct.

Executed on 7/22/2025



Christopher L. Coleman, President  
Signature

**STATEMENT OF CONTRACTOR'S QUALIFICATIONS**  
(to be submitted by the contractor as a part of the bid package)

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The bidder may submit any additional information he desires.

1. Name of contractor.  
Continental Flooring Company
2. Permanent main office address, including city, state, and zip code.  
9319 N. 94th Way, Suite 1000, Scottsdale, Arizona 85258
3. When organized.  
2/1978
4. If corporation, where incorporated.  
Arizona
5. How many years have you been engaged in construction or similar work under your present firm or trade name?  
46
6. Contracts on hand: (schedule these, showing gross amount of each contract and the appropriate anticipated dates of completion).  
  
See attached
7. General character of work performed by your company.  
  
Floorcovering Contractor
8. Have you ever failed to complete any work awarded to you? If so, where and why?  
  
No
9. Have you ever defaulted on a contract? If so, where and why?  
  
No
10. List the more important contracts recently completed by you, stating approximate gross cost for each, and the month and year completed.  
  
See attached

CONTINENTAL FLOORING COMPANY CURRENT CONTRACTS						
CUSTOMER	City State	DESCRIPTION	CONTRACT AMOUNT	CONTRACT	CONTACT PHONE	CONTACT E-MAIL
CA Men's Colony	San Luis Obispo CA	None Rubber	\$ 153,790.00	Stefan Jones	559-267-3505	stefan.jones@cdcr.ca.gov
Redding City Hall	Redding CA	Mannington Phenomena Carpet Tile	\$ 606,661.00	Sean Price	530-248-0194	seanprice@rednet.org
Pineville Housing Authority	Pineville, LA	Shaw LVT	\$ 274,280.00	Alayna Taysa	415-407-5613	alayna.taysa@psa.gov
Sacramento CA Judges Offices	Sacramento, CA	Bentley Kings Road direct glue carpet	\$ 25,830.00	Patrick Dunlavey	415-741-9685	patrick.dunlavey@psa.gov
J-035 Education Center	Guam USA	Ceramic Tile Manning carpet tile	\$ 735,960.00	Cameron Cooper	671-788-4548	cameron.cooper@caddell.com
USDA Chambers Robert Matad Fed Courthouse	Sacramento, CA	Bentley Kings Road direct glue carpet	\$ 59,330.00	Alayna Taysa	415-407-5613	alayna.taysa@psa.gov
Kinawha Housing Authority	Charleston WV	Shaw Unwell LVT	\$ 193,788.95	Anthony Long	304-348-6451	ajlong@ckha.com
J-301 Corrosion Control	Guam USA	Daltile Rogge Wd base	\$ 41,380.00	Daniel Hee	671-787-9456	dhee@nanhawall.com
Miner Village, Rolla MO	Rolla MO	Mohawk LVT; Flexco base and stair treads	\$ 264,100.00	Jerry Harris	573-341-4325	j.harris@rmt.edu
Bldg P-316 Artillery Battery Facilities	Guam USA	Daltile; Crossville Tile;	\$ 245,380.00	Stash Kikkera	808-842-4929	stokkera@nanhawall.com
Colorado State University	Fort Collins, CO	Shaw Downtown USA LVT; Tarkett base and stair treads	\$ 103,100.00	Brady Carlstrom	970-567-1089	brady.carlstrom@colorado.edu
Concord University	Athens WV	Flexco Prime Sports	\$ 48,569.00	Andrea Webb	304-952-5290	webba03@concord.edu
Replace Carpet In GSA Appraiser Building	San Francisco, CA	Install Carpet Tile on the 6th and 5th floors	\$ 224,380.00	Allen Tse	415-420-8410	allen.tse@gsa.gov
City of Columbus, Police Station	Columbus, OH	Replace Carpet Tile	\$ 14,330.00	Kathryn Hartshorne	614-671-2156	kathshorne@columbuspolice.org
Groton CT Building 105	Groton, CT	Install Carpet Tile in Building 206	\$ 43,880.00	Michael Whaley	860-694-5880	michael.b.whaley.mil@us.navy.mil
Georgetown Prep School	North Bethesda, MD	Install Stairwell	\$ 6,660.00	Mick Kudo	202-578-3917	mkudo@prep.org
Stockbridge-Munroe Community	Bowling, WI	Floor Coverings Replacement	\$ 421,800.00	Brian Willoughby	715-628-0028	brian.willoughby@ilc.gov
Replace Carpet in Building 442	Buckley SFB	Carpet Tile in rooms	\$ 90,080.00	Capt Clatterbaugh	972-358-5071	clatterbaugh1@usmc.mil

## Continental Flooring Company - National Installation References

Customer Name	Location	Materials Installed	Comp Date	Contract Amount	Contact Name	Contact
WV Veterans Nursing Facility	Clarksburg, WV	Mannington 20 mil LVT	May-25	\$ 151,707.00	Michael Messenger	304-326-7463
VA Dept of Military Affairs Fort Blackfoot	Blackston, VA	Armstrong Stonetex VCT	Mar-25	\$ 369,877.30	Thomas Shell	434-294-1294
University of Rhode Island	Kingston, RI	Armstrong LVT, Tarkett LVT, Stair treads	Dec-24	\$ 972,184.00	Jeff Plouffe	401-479-7107
Las Cruces Convention Center	Las Cruces, NM	Mohawk carpet tile	Mar-24	\$ 212,982.50	Mauro Monsisvals	915-383-8984
Army University	Fort Belvoir, VA	Flooring Replacement	Feb-24	\$ 87,418.00	Mark Hurlay	703-805-8146
Cameron Parish School Board	Grand Chenier, LA	Tarkett LVT Installation	Nov-23	\$ 108,888.00	Kelly Sue Bokhan	603-737-2226
City of Henderson-Black Mtn Rac Center	Henderson, NV	Install and supply of LVT	Nov-23	\$ 199,830.00	Jerry Hagen	702-267-3293
East Hartford HA	East Hartford, CT	Flooring replacement	Oct-23	\$ 218,330.00	James Rovezzi	860-622-5952
CA Corrections Facility	Soledad, CA	Flooring replacement	Aug-23	\$ 143,538.00	Stafon Jones	559-267-3505
Heritage High School	Segianw, MI	Shaw Carpet tile and LVT	Mar-23	\$ 165,058.00	Vince Drumright	989-752-0400
GSA Little Rock	Little Rock, AR	Multiple flooring replacement projects	Feb-23	\$ 72,083.00	Eric Johnson	501-707-2400
Blackshear Elem School	Blackshear, GA	Flooring replacement	Dec-22	\$ 460,635.00	Harbin Farr	912-288-6740
Blackshear Middle School	Blackshear, GA	Flooring replacement	Dec-22	\$ 405,541.00	Harbin Farr	912-288-6740
Governors Office State of WV	Charleston, WV	Carpet and Flooring Replacement	Nov-22	\$ 119,726.00	Eric Miller	304-558-2000
Pines Point Senior Residence	Pembroke Pines, FL	Installation of VCT	Nov-22	\$ 97,244.00	Matt Desharnais	954-261-7207
Seguin Housing Authority	Seguin, TX	LVT and layover installation	Nov-22	\$ 189,568.00	Robert Garcia	504-881-5289
DePere Housing Authority	DePere, WI	Walk off carpet tile, tread and base	Nov-21	\$ 109,536.00	Wade Schmechel	920-336-0755
Oxnard Housing Authority	Oxnard, CA	VCT and base	Feb-21	\$ 378,372.00	Deborah Jones	805-385-8041
North Andover Housing Authority	North Andover, MA	LVT and stair treads	Oct-20	\$ 84,690.00	Gary Boucher	978-408-4711
Harris County Public Library	LaPorte, TX	Carpet tile and base	Sep-20	\$ 107,204.00	David Hefner	281-470-5180
Sommerville Housing Authority	Sommerville, MA	LVT	Jun-20	\$ 111,035.00	Brian Langton	617-331-2397
Merced Community College	Merced, CA	Carpet Tile	Jan-20	\$ 78,900.00	Stacey Hicks	209-384-6225
School District of Greenville County	Greenville County, SC	Armstrong VCT, Flexco 4" base	Jul-19	\$ 484,231.92	Jason Franklin	864-355-8078
Hillsborough City Aviation Auth.	Tampa, Florida	Custom pattern match carpet	Aug-19	\$ 904,950.00	Carol Cowan	813-870-7875
Autauga County Schools	Prattville, AL	Flooring Installation	Jul-19	\$ 283,541.00	Jay Thompson	334-799-3035
Erle International Airport	Erle, PA	Johnsonite and Congoleum flooring	May-19	\$ 157,254.00	Ian Bogle	814-833-4558
Chicopee Housing Authority	Chicopee, MA	Rubber tile and stair treads	Feb-19	\$ 176,154.00	Robert Kachinski	413-592-6132
State of West Virginia	Huntington, WV	Shaw Stacked Tile	Feb-19	\$ 245,988.00	David Parsons	304-550-9650
Luke AFB	Luke AFB, AZ	Durkan, Amico Vintage and Daltile	Jan-19	\$ 139,505.50	Jane Yates	575-915-4685
City of La Porte	La Porte, TX	Installed LVT and Carpet	Dec-18	\$ 124,809.30	Cherrell Daeumer	281-470-5123
Peterson AFB	Colorado Springs, CO	Installed Carpet and Ceramic	Nov-18	\$ 239,095.00	Sean Dooley	719-556-4024
US Navy	San Diego, CA	Flooring Replacement	Sept 18	\$ 131,830.00	Eliisa R. Wing	858-388-9543
Stanislaus County	Modesto, CA	Installed Carpet Tile	July-18	\$ 109,680.00	Mike Herzog	209-681-8123
GSA San Diego	San Diego, CA	Various Projects	Apr-18	\$ 400,000.00	Warren Leske	415-698-1174
USC Aiken B&E Building Repairs	Aiken SC	Floor Repairs	Mar-18	\$ 271,696.00	Brian Enter	803-641-3254
El Paso County Colorado	Colorado Springs	Carpet Replacement	Mar-18	\$ 124,380.00	Tom Sesler	719-520-6560
Little Rock Courthouse/ Post Office	Litler Rock, AR	Installed Carpet Tiles	Mar-18	\$ 148,380.00	Eric Johnson	501-707-2400
Oxnard Housing Authority	Oxnard, CA	VCT and base	Dec-17	\$ 362,500.00	Deborah Jones	805-385-8041
Frank Lemon Gym School	Jefferson, LA	Gym Floor Replacement	Dec-17	\$ 103,711.00	Brad Roth	504-813-7014
Rutherford County Schools	Murfreesboro, TN	Install carpet tiles and base	May-17	\$ 240,975.00	Draw Hodge	615-893-5815
Minneapolis Veterans Home	Minneapolis, MN	Install carpet and base	Jan-17	\$ 283,830.00	Jesse Klankowski	612-331-7178
San Diego GSA	San Diego, CA	Shaw Carpet Tiles	Nov-16	\$ 319,837.30	David Dilks	619-696-2816
Tampa International Airport	Tampa, Florida	Carpet replacement	May-16	\$ 697,000.00	Adam Smith	813-676-4337
Department of Veterans Affairs	Jamaica, NY	Install Flexco LVT	Apr-16	\$ 170,478.34	Dominik Gammon	714-526-1000
Cheraw Housing Authority	Cheraw, SC	LVT and base	Sep-15	\$ 262,118.50	Eddie Jenkins	843-669-4163
Maxwell AFB	Montgomery, AL	Install carpet, rubber flooring and base	Apr-14	\$ 112,651.59	Susan Thomas	210-395-7869
Town of West Hartford	West Hartford, CT	VCT and base	Aug-13	\$ 405,929.56	Michael Longo	860-561-7927
Army National Guard	Gulfport, MS	Carpet, VCT and Base	Aug-12	\$ 398,300.00	Dennis Shadwell	228-323-0207
Town of Maynard	Maynard, MA	VCT and Cove Base	Jul-12	\$ 160,635.85	Gregg Laffer	978-897-1308
Oxnard Housing Authority	Oxnard, CA	Sheet Vinyl and base	Apr-12	\$ 374,891.00	Mehrdad Rahimi	805-385-8033
SSA Administration	Philadelphia, PA	Shaw Carpet Tiles	Dec-11	\$ 265,380.00	Barry Ellis	215-597-8204
California State University	Hayward, CA	Carpet and sheet vinyl	Sep-11	\$ 587,888.00	Keat Saw	510-885-3968
County of San Joaquin	Stockton, CA	Carpet and VCT	Apr-11	\$ 894,396.30	Gabrial Karam	209-468-3357



11. List your major equipment available for this contract (include separate sheet).

All equipment required for the carpeting installation

12. Experience in demolition and site clearance work similar in important to this project.

See attached references

13. Background and experience of the principal members of your organization including the officers.

See attached resume's

14. Give bank reference.

Attached

15. Will you upon request, fill out a detailed financial statement and furnish any other information.

Yes

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the owner in verification of the recitals comprising this statement of bidders' qualifications.

Dated this 22 day of July, 20 25

Christopher L. Coleman

Printed Name

Signature

Continental Flooring Company

Company

President

Title



9319 N 94<sup>th</sup> Way Ste 1000  
Scottsdale AZ 85258  
(480) 949-8509  
(480) 945-2603 -- Fax  
(800) 825-1221 -- Toll Free  
[www.continentalflooring.com](http://www.continentalflooring.com)

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**CHRISTOPHER L. COLEMAN**  
**PERSONAL INFORMATION**

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Employed by Continental Flooring Company from 1985 through the present.

<b>1999-Present</b>	<b>President</b>
<b>1995-1999</b>	<b>Executive Vice President</b>
<b>1990-1995</b>	<b>Vice President and Chief Financial Officer. Responsible for day-to-day operations.</b>
<b>1988-1989</b>	<b>General Manager and Chief Financial Officer. Responsible for finances, personnel as well as estimating and sales.</b>
<b>1987- 1988</b>	<b>Control of Finances including financial planning, accounts, receivable, accounts payable, and cash flow management. also include estimating and sales</b>
<b>1986-1987</b>	<b>Estimator</b>
<b>1985-1985</b>	<b>Assistant Estimator</b>
<b>Licenses/Training</b>	<b>EPA Ahera Asbestos training: Contractor/Supervisor Qualified</b>  <b>States License: Qualifying Party</b> <b>State of Arizona Contractor License</b> <b>State of Nevada Contractor License</b> <b>State of South Carolina General Contractors License</b> <b>State of Tennessee General Contractors License</b> <b>State of North Carolina Federal Contractors License</b> <b>State of Louisiana General Contractors License</b> <b>State of Arkansas Flooring License</b>
<b>Education:</b>	<b>Received Bachelor of Finance Degree from Arizona State University in 1987. Had extensive side studies in Computer Programming, Computer Science, Mathematics and Astronomy.</b>
<b>Employment:</b>	<b>Employed during High School and College in Service Industry.</b>
<b>Associations:</b>	<b>Finance Chair- Young Entrepreneurs Organization Life Member of Sigma Chi Fraternity.</b>



9319 N 94<sup>th</sup> Way Ste 1000  
Scottsdale AZ 85258  
(480) 949-8509  
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[www.continentalflooring.com](http://www.continentalflooring.com)

**GERALD F. MCMAHON  
PERSONAL HISTORY**

**EMPLOYMENT:**

*1988-Present*

**Continental Flooring Company; Scottsdale, Arizona**  
Vice President, Contracts, and Assistant Secretary of the Company

Responsible for complete management and control of Installation Contracts with Federal Agencies throughout the United States. Extensive work in material purchasing, billing and wage control. Has administered the completion of over 700 projects.

*1983 thru 1988*

Employed all of College career.

*Licenses/Training:*

EPA Ahera Asbestos training: Contractor/Supervisor Qualified

Real Estate License: State of Arizona-not currently updated  
State Licenses: Qualifying Party for various states

**EDUCATION:**

Arizona State University; Liberal Arts, Economics, 1988. Extensive studies in Business.

*Employment:*

Employed during High School and College Careers in Service Industry.

*Leadership:*

President/Treasurer/Housing Manager for large Campus Organization.



9319 N. 94<sup>th</sup> Way • Suite 1000  
Scottsdale, AZ 85258  
(480) 949-8509  
FAX (480) 945-2803  
<http://www.continentalflooring.com>

### **CREDIT AND CORPORATE INFORMATION**

INCORPORATED FEBRUARY 9, 1979  
FEDERAL I.D. NUMBER 88-0369902  
SIC NUMBER 1762  
AZ RESALE NUMBER 07-218995J

### **OFFICERS**

CHRISTOPHER L. COLEMAN, PRESIDENT  
LISA M. COLEMAN, SECRETARY/TREASURER  
BRUCE KIGER, VICE PRESIDENT - FINANCE  
GARY MCMAHON, VICE PRESIDENT - OPERATIONS

### **CREDIT REFERENCES**

ARMSTRONG CEILINGS  
ATTN: AMANDA BEAVER  
E-MAIL: ABEAVER@ARMSTRONGCEILINGS.COM

INTERFACE  
ATTN: CINDY WESTCOTT  
E-MAIL: CINDY.WESTCOTT@INTERFACE.COM

FREIGHTQUOTE.COM  
ATTN: CREDIT DEPT  
E-MAIL: WGARRISON@FREIGHTQUOTE.COM  
(888) 318-4373 FAX

BIG D FLOOR COVERING  
ATTN: CELENE SANTILLANES  
E-MAIL: CELENE.SANTILLANES@BIGDSUPPLY.COM

### **BANK INFORMATION**

JP MORGAN CHASE BANK, N.A.  
ATTN: RICH LATSKO, RELATIONSHIP MANAGER  
E-MAIL: RICHARD.J.LATSKO@CHASE.COM  
FAX (888) 712-0843  
WRITTEN REQUESTS ONLY

### **GENERAL INFORMATION**

THE MAJOR PORTION OF OUR BUSINESS IS SALE OF FLOOR COVERING TO  
FEDERAL, STATE AND LOCAL AGENCIES COAST - TO - COAST AS WELL AS  
SOME PRIVATE OR COMMERCIAL ACCOUNTS.

(REVISED 10/22)



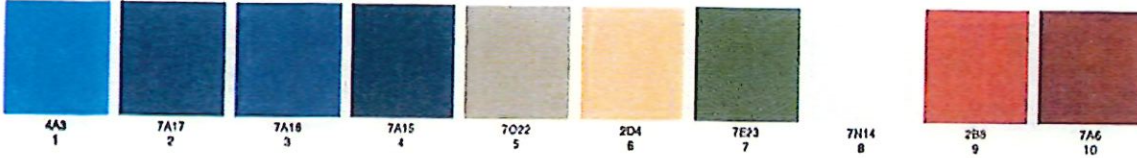


p.s.

Job Name: Saenger Theater  
Job#: 178755  
Slidemark: Other  
Product Type: PDI Broadloom  
Base Grade: Synthesis: Ripple (FH64P) 36oz

Strikeoff#: U0313050C  
Pattern Name/Pattern#: D42402  
Pattern Repeat: 72" x 72"  
PS#: 20250313\_0050\_C

contact: ps@mohawkgroup.com



This strike-off and the pattern displayed are the proprietary property of Mohawk Group/Durkan and may not be given to or reproduced by another manufacturer. It is being presented for the express purpose of ordering flooring samples. Mohawk Group/Durkan reserves the right to request the return of the strike-off at any time. This strike-off may only be a section of the entire pattern repeat, a close representation of color & texture. Variances may occur subject to normal manufacturing tolerances; please request a physical flooring sample for better color accuracy.

(Dimensions are in inches)

Mohawk Group | DURKAN



# State of Mississippi

## BOARD OF CONTRACTORS

ACTIVE

CONTINENTAL FLOORING COMPANY  
9319 94th WAY NORTH STE. 1000  
SCOTTSDALE, AZ 85258

is duly registered and entitled to perform

- 1) ASBESTOS ABATEMENT OR REMOVAL 2) FLOORS  
3) REMODELING



*We have hereunto set our hand and caused the Seal of the Mississippi Board of Contractors to be affixed this 8 day of Oct., 2021*

CERTIFICATE OF RESPONSIBILITY

No. 09443-SC

Expires Oct. 8, 2025

*Joel Q. Canall*

CHAIRMAN OF THE BOARD

# OVERVIEW OF EXPERIENCE

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Continental Flooring Company, headquartered in Scottsdale, Arizona, was established in 1979. We are a nationwide flooring contractor. For over 40 years, we have been dedicated to principally serving Federal, State, County and Municipal Governments; Educational Institutions; Public Housing Authorities; and other public sector agencies throughout the United States.

Additionally, we are a long time GSA flooring contractor with a history of carpet and resilient flooring installation throughout the United States.

Our professional performance represents dedication to providing first class workmanship, combined with faithful conformance to the strict governing specifications at some of the industry's most competitive prices. We persist in keeping up with the current trends and products, while still providing the old fashioned service that has helped us get to where we are today.

As a family-owned business, we have stressed the commitment by our staff to provide the very best service to our customers throughout the Company's history. A philosophy and practice of caring professionalism permeates our sales and operations functions. This approach to doing business has paid off in that the majority of our customer base has been referred to Continental Flooring Company by other satisfied customers.

Our business philosophy is best described by our dedication to customer satisfaction. This philosophy can best be summed up by a statement by the late James G.F. Coleman, Founder of Continental Flooring Company, "...we believe in supporting the industry (floor covering) and providing the opportunity for customers to get the best value they can for their money." To accomplish this, Continental Flooring Company makes every effort to operate as a totally committed customer service oriented organization.

We are proud to make the statement that throughout our Company's history we never been debarred from doing business with any government agency. This is primarily due to our record of conforming to contract and/or product specifications and standards. Our project managers strive to perform within forecasted costs and should we experience cost overruns not attributed to a customer negotiated change order, we do not pass that cost overrun along to the customer.

The staff of Continental Flooring Company persists in keeping up with current trends in product innovation and installation techniques to provide our customers with the best possible products, service and price availability. With our vast knowledge and experience in the floor covering industry, Continental Flooring Company, teamed with the top floor covering manufacturers in the industry, adds a full package of the highest quality products and services available at the best value.

Our vast experience throughout the country has provided us with the knowledge and experience necessary to handle projects similar to the size and complex scope presented. Throughout the course of work, Continental Flooring Company staff has proven time and again that our leadership within the floor covering industry is second to none. No matter the size or scope of the project, our staff strives to provide the highest level of professionalism and skill to insure that the project runs as smoothly as possible, with minimal interruption to the end user. We attach references to include recently completed and current contracts.

Continental Flooring Company has extensive experience in working on floor covering projects within occupied facilities. This experience has provided our staff the knowledge necessary to complete projects within occupied facilities with minimal disruption.

Our staff attends regular training sessions for professional development, as well as industry training sessions offered by our manufacturers. This corporate commitment to continuing education ensures that our staff is able to provide the most updated installation methods on the cutting edge of the floor covering industry.

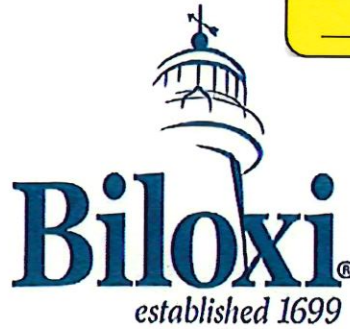
The average tenure at Continental Flooring Company is over 15 years. With minimal corporate turnover, our staff's knowledge is top notch, and continues to grow every day through training. In addition, Continental Flooring Company is committed to its customers and employees by providing cutting edge technology. Our accounting software was custom designed to fulfill the unique needs of our customers. Our sales staff and project managers work with a state-of-the-art digital CAD system, allowing us to minimize the amount of waste on a project substantially, even within the most complex situations. In addition, we have recently upgraded to Microsoft Dynamics CRM which will allow us to e-communicate with our customers even more effectively and manage our customer accounts at a whole new level.

The staff within the Operations Division of Continental Flooring Company are organized in a multi-tier format to insure the highest level of service to our customers. With the support of Project Coordinators, our Project Managers have the ability to efficiently manage several projects at one time. Customers are provided a primary in-office contact, a secondary in-office contact, as well as an on-site contact. Project Managers are assigned projects based on their current workload. With a rotating assignment philosophy, workload is spread evenly amongst the Project Management teams. If awarded this contract it would be the intention of Continental Flooring Company to assign the project management of this project to our Vice President of Operations, Mr. Gary McMahon.



**Mayor**  
Andrew "FoFo" Gillich

**City Council**  
Wayne Gray, Ward 1  
Anthony L. Marshall, Ward 2  
Mike Nail, Ward 3  
Jamle Creel, Ward 4  
Paul A. Tisdale, Ward 5  
Kenny Glavan, Ward 6  
David Shoemaker, Ward 7



**EXHIBIT  
B**

140 Lameuse Street  
P. O. Box 429  
Biloxi, Mississippi 39533  
[www.biloxi.ms.us](http://www.biloxi.ms.us)

July 31, 2025

In accordance with §31-7-13 *et seq.* of the Mississippi Code of 1972, Annotated, the City of Biloxi received sealed bids for the installation of carpeting in the Saenger Theatre, on July 22, 2025. The Selection Committee convened on July 31, 2025. After having reviewed and discussed all proposals received, the Selection Committee determined that a contract should be awarded to Continental Flooring Company.

**SELECTION COMMITTEE:**

Christy LeBatard  
Director of Engineering

Peter Abide  
City Attorney

Mandy Hornsby  
Historical Administrator

Rachel M. Quave  
Contract Manager

**SAENGER CARPETING**

Bid Opening July 22, 2025

Vendor	Proposed Fees to the City (40 pts)	Delivery/Install Date (40 pts)	Suitability of carpet design (20 pts)	Total
Shaun Parker Construction	\$78,995.00 Broadloom \$143,000 Tiles	30 Days		
Score	20	40	15	75
Continental Flooring Company	\$69,099.00 Broadloom \$73,100.00 Tiles	30 Days		
Score	40	40	20	100
Wilco Construction	\$106,485.00 Broadloom	30 Days		
Score	30	40	15	85



Committee Member

**SAENGER CARPETING**

Bid Opening July 22, 2025

Vendor	Proposed Fees to the City (40 pts)	Delivery/Install Date (40 pts)	Suitability of carpet design (20 pts)	Total
Shaun Parker Construction	\$78,995.00 Broadloom \$143,000 Tiles	30 Days	20	
Score	20	40	45	85
Continental Flooring Company	\$69,099.00 Broadloom \$73,100.00 Tiles	30 Days		
Score	40	40	20	100
Wilco Construction	\$106,485.00 Broadloom	30 Days		
Score	25	40	20	85

  
\_\_\_\_\_  
Committee Member

**SAENGER CARPETING**

Bid Opening July 22, 2025

Vendor	Proposed Fees to the City (40 pts)	Delivery/Install Date (40 pts)	Suitability of carpet design (20 pts)	Total
Shaun Parker Construction	\$78,995.00 Broadloom \$143,000 Tiles	30 Days		
Score		35	40	15
				90
Continental Flooring Company	\$69,099.00 Broadloom \$73,100.00 Tiles	30 Days		
Score		40	40	20
				100
Wilco Construction	\$106,485.00 Broadloom	30 Days		
Score		30	40	15
				85

  
\_\_\_\_\_  
Committee Member

**SAENGER CARPETING**

Bid Opening July 22, 2025

Vendor	Proposed Fees to the City (40 pts)	Delivery/Install Date (40 pts)	Suitability of carpet design (20 pts)	Total
Shaun Parker Construction	\$78,995.00 Broadloom	30 Days		
	\$143,000 Tiles			
Score	35	40	20	95
Continental Flooring Company	\$69,099.00 Broadloom	30 Days		
	\$73,100.00 Tiles			
Score	40	40	20	100
Wilco Construction	\$106,485.00 Broadloom	30 Days		
Score	30	40	20	90



Committee Member



Revised: 02/23/2023

**CONSTRUCTION AGREEMENT BETWEEN OWNER AND CONTRACTOR  
ON THE BASIS OF A LUMP SUM**

THIS AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2025, by and between the

CITY OF BILOXI, MISSISSIPPI

(hereinafter called OWNER) and

CONTINENTAL FLOORING COMPANY

(hereinafter called CONTRACTOR)

WITNESSETH THAT OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE I: WORK**

- 1.01 The intent of the Contract is to provide for the execution, construction, and completion in every detail of the work described, and to compensate the CONTRACTOR for all acceptable work performed in accordance with the provisions of the Contract. The CONTRACTOR shall furnish all labor, materials, equipment, supplies, transportation, supervision, methods and procedures necessary to complete the work in accordance with the specifications and terms of the Contract Documents.
- 1.02 The CONTRACTOR shall perform all work as specified or indicated in the Contract Documents for the completion of the Project generally described as follows:

**SAENGER CARPETING - PROJECT 1107**

- 1.03 CONTRACTOR represents that he has familiarized himself with, and assumes full responsibility for having familiarized himself with, the nature and extent of the Contract Documents, Work locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in manner affect the performance of the Work, and represents that he/she has correlated his/her study and observations with the requirements of the Contract Documents.
- 1.04 Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. He shall at once report in writing to Engineer any conflict, error discrepancy which he may discover; however, he shall not liable to OWNER or Engineer for his failure to discover any conflict, error or discrepancy in the Drawings or Specifications.

## CONSTRUCTION AGREEMENT (Continued)

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### **ARTICLE II: ENGINEER**

- 2.01 The project has been designed by the City of Biloxi located at 214A Delauney Street, Biloxi, MS 39530, who is known as the DESIGN ENGINEER throughout the specifications. The City Engineer for the City of Biloxi Engineering Division will act as ENGINEER in connection with completion of the Project in accordance with the Contract Documents. It is understood that the City Engineer may designate authority to any member of his staff, as he deems necessary.
- 2.02 The Engineer has the authority to make decisions on all questions that may arise as to the quality and acceptability of materials, the Work, and progress of the Work; all questions that may arise as to the interpretation of plans and specifications; and all questions as to the fulfillment of the Contract.
- 2.03 The Engineer has the right, but not the obligation, to suspend work wholly or in part and to withhold payments because of the CONTRACTOR'S failure to correct conditions unsafe for workmen or the general public, for failure to carry out provisions of the Contract Documents, or for failures to carry out orders. The Engineer may also suspend Work for periods deemed necessary due to unsuitable weather conditions, for any conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the Engineer to be in the public interest. The OWNER shall not be held liable for any conditions that it is not made aware of, and there is no duty on the part of the OWNER to inspect for said unsafe and/or unsuitable conditions. The duty to ensure that the conditions are safe to workmen and the public remains at all times on the CONTRACTOR, and shall not be altered by any course of conduct and/or action or inaction of the OWNER.
- 2.04 The Engineer will have the authority to enforce and make effective all decisions and orders relating to the Contract Documents.

### **ARTICLE III: CONTRACT TIME**

- 3.01 The work herein described shall be completed within thirty (30) Calendar days for the project after the date of the Contract Time commences, also known as the Notice to Proceed Date. This date is established by the date on the Notice to Proceed order.
- 3.02 The CONTRACTOR shall provide sufficient materials, equipment and labor to guarantee the completion of the project in accordance with the plans and specifications within the Contract Time.
- 3.03 Percent complete shall be determined by comparing the total money earned to date by the CONTRACTOR, minus any payment for advancement of materials, to the total dollar amount of the Contract. The percentage elapsed time shall be calculated as the direct ratio of the expired Calendar Days to the total Calendar Days provided for in the Contract.

## CONSTRUCTION AGREEMENT (Continued)

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- 3.04 When the "percent complete" lags more than twenty percent (20%) behind the "percent time lapsed," the Engineer shall notify the CONTRACTOR that they have seven (7) calendar days to submit a written statement and revised progress schedule indicating any additional equipment, labor, materials, etc. to be assigned to the work to ensure completion within the specified Contract Time. Failure to submit the revised schedule may result in withholding of the monthly estimate. When the "percent complete" lags more than forty percent (40%) behind the "percentage of elapsed time," the Contract may be terminated.
- 3.05 On Calendar Day Contracts, an extension of Contract Time may be granted for unforeseen utility delays, abnormal delays caused solely by the OWNER or other governmental authorities, or unforeseeable disastrous phenomena of nature of the magnitude of earthquakes, hurricanes, named tropical storms, tornadoes, or flooded essential work areas that are deemed to unavoidably prevent prosecuting the work.
- 3.06 The span of time allowed in the Contract as awarded is based on the quantities used for comparison of bids. If satisfactory fulfillment of the Contract requires performance of work in greater quantities than those set forth in the proposal, the time allowed for completion shall be increased by Calendar Days in the same ratio that the cost of such added work increases the total value of the original Contract. This is exclusive of the cost of work altered by an approved Change Order for which a time adjustment has already been made.
- 3.07 Additional Contract Time for weather days will be determined using the Keesler AFB monthly climatology report. Additional Contract Time may be approved for any days that have precipitation of 0.5 inches or greater, day for day. Weather days will not be automatically granted, in order to be considered, a request for weather days shall be included in the monthly schedule update submitted with the pay estimate. To justify days in addition to the days reported by the Keesler climatology reports, the Contractor is required to provide an updated schedule showing the impact along with a written narrative and/or pictures with the monthly schedule update.

### **ARTICLE IV: CONTRACT PRICE**

- 4.01 CONTRACTOR submitted the approved bid for the performance of the work described in the Contract Documents in the total sum of:

Seventy-Three Thousand One Hundred and 00/100 Dollars (\$73,100.00)

- 4.02 The total sum above is based on estimated quantities for each pay item. The actual payment to the CONTRACTOR shall be subject to the actual quantity of approved work performed and the terms and conditions of this Contract. The total Contract price shall not exceed the amount of the approved bid unless otherwise approved by the OWNER.

**ARTICLE V: CONTRACT DOCUMENTS**

- 5.01 The Contract Documents, which comprise the Contract between the OWNER and CONTRACTOR, consists of the following documents, which documents are made a part of this agreement as fully as if disclosed and written at length and made a part thereof:
- (a) This agreement (Pages 1 through 28, inclusive),
  - (b) Exhibits to this Agreement,
  - (c) CONTRACTOR'S Proposal and Bonds,
  - (d) Notice of Award,
  - (e) Advertisement, Section 901
  - (f) Special Provisions,
  - (g) Technical Specifications,
  - (h) Any Addenda to the Contract Documents.
  - (i) Any modifications, including Change Orders, duly delivered after execution of this Agreement, and
  - (j) Notice to Proceed.
- 5.02 The Contract Documents constitute the entire agreement between OWNER and CONTRACTOR and may be only altered, amended or repealed by a duly executed written instrument.

**ARTICLE VI: SUBCONTRACTORS**

- 6.01 Neither the OWNER nor CONTRACTOR shall, without the prior written consent of the other, assign or sublet in whole or in part his interest under any of the Contract Documents; and, specifically, CONTRACTOR shall not assign any moneys due or to become due without prior written consent of OWNER.
- 6.02 CONTRACTOR agrees to procure SUBCONTRACTORS in a fair and nondiscriminatory manner.
- 6.03 CONTRACTOR shall ensure that each SUBCONTRACT includes all the provisions of this Contract. CONTRACTOR is responsible for monitoring all SUBCONTRACTORS to ensure compliance with the provisions contained herein.

## CONSTRUCTION AGREEMENT (Continued)

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- 6.04 CONTRACTOR shall not enter into any SUBCONTRACT without the written approval of OWNER.
- 6.05 Subcontracting does not release CONTRACTOR of bond and Contract liability and shall not be construed to imply that a Contract exists between the OWNER and a third party.

### **ARTICLE VII: CONTROL OF WORK**

- 7.01 CONTRACTOR shall supervise and direct the work efficiently and with his best skill and attention. He shall be responsible to see that the finished work complies accurately with the Contract Documents.
- 7.02 CONTRACTOR shall keep on the work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and Engineer except under extraordinary circumstances. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR. The CONTRACTOR shall furnish in writing the name of his resident superintendent and telephone numbers where he may be reached in the event of emergencies.
- 7.03 CONTRACTOR shall keep one record copy of all Specifications, Drawings, Addenda, Modifications and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. These shall be available to Engineer and shall be delivered to him for OWNER upon completion of the Project.
- 7.04 CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work, and at the completion of the Work he shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for use. CONTRACTOR shall restore to their original condition those portions of the site not designated for alteration.
- 7.05 In case of the suspension of Work from any cause whatever, CONTRACTOR shall be responsible for all material, shall properly store them, if necessary, and shall provide suitable drainage of the area and erect temporary structures where necessary.
- 7.06 CONTRACTOR shall confine his equipment, the storage of materials and equipment and the operations of his workmen to areas permitted by law, ordinances, permits or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with materials or equipment. CONTRACTOR shall not enter or occupy with men, tools, or material any private ground without the consent of the owner of said private property.

### **ARTICLE VIII: CONTROL OF MATERIALS**



## CONSTRUCTION AGREEMENT (Continued)

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- 8.01 CONTRACTOR shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliance, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.
- 8.02 All materials and equipment shall be new, except as otherwise provided in the Contract Documents. If required by Engineer, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 8.03 All materials and equipment shall be applied, installed, connected, erected, raised, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the Contract Documents.
- 8.04 For all manufactured articles, units, components, or materials incorporated in the work completed under this Contract, CONTRACTOR shall furnish the manufacturer's warranties, guarantees, instruction sheets, and technical specification sheets before final acceptance of work.
- 8.05 All materials not conforming to the requirements of the specifications at the time they are incorporated in the Work shall be rejected and removed immediately unless otherwise instructed by the Engineer.
- 8.06 In compliance with the laws of the State of Mississippi, in choosing materials for the project, the successful bidder shall be required to give preference to materials grown, produced, prepared, made or manufactured within the State of Mississippi. The foregoing notwithstanding, no preference shall be given to materials grown, produced, prepared, made or manufactured in the State of Mississippi when other materials of like quality produced outside the State of Mississippi may be purchased or secured at less cost, or any other materials of better quality produced outside the State of Mississippi can be secured at a reasonable cost.
- 8.07 The CONTRACTOR shall not use any materials on the project that are grown, produced, prepared, made or manufactured outside the United States.
- 8.08 Any materials to be used as a substitute to any material specified in the Contract shall be approved by the Engineer, or his authorized representative, prior to use. The CONTRACTOR shall be responsible for submitting all information needed by the Engineer to show all properties, characteristics, test reports, etc. to make an informed decision as to the compliance of the proposed material with the Contract.
- 8.09 CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by him in accordance with the law of the place where the Work is to be performed.
- 8.10 CONTRACTOR warrants and guarantees that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality and free from faults or

## CONSTRUCTION AGREEMENT (Continued)

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defects and in accordance with the requirements of the Contract Documents and of any inspections, tests or approvals referred to in the Technical Specifications.

- 8.11 All tests, inspections and submittals shall be submitted to the OWNER in accordance with the Technical Specifications.

### **ARTICLE IX: PROGRESS SCHEDULE**

- 9.01 The CONTRACTOR shall submit a progress schedule to the City Engineer or his authorized representative for his approval no later than three (3) working days after the Notice to Proceed date. The schedule will be in the form of a bar graph indicating the controlling phases of work, the bid sheet sequence numbers of all pay items in each phase, and the beginning and the ending time for each phase. At least one phase of work will be shown to begin no later than the date for beginning of Contract Time, and at least one phase of work will be shown to be in progress until all work is scheduled to be complete. The schedule shall indicate the sequence and interdependency of all Work activities.
- 9.02 The CONTRACTOR'S progress schedule shall reflect a realistic rate of prosecution with all work to be completed within the specified Contract Time. In preparation of his progress schedule, the CONTRACTOR shall take into consideration all controlling factors and specified limitations. The schedule shall show work broken down by street name (if applicable) and then by station number so that a logical progress of work can be followed.
- 9.03 An approved progress schedule shall be in effect until the date on which a revised schedule is approved. The approved progress schedule will be the basis for establishing major construction operations, Contract Time assessment, and for checking the progress of the work.
- 9.04 Whenever it becomes apparent from the current monthly updated Schedule that the Contract completion date will not be met, the CONTRACTOR agrees that they will take some or all of the following actions. However, these actions must first be reviewed and approved by the OWNER. These actions will be taken by the CONTRACTOR at NO additional cost to the OWNER.
- (a) Increase construction manpower to eliminate the backlog of work.
  - (b) Increase the number of hours worked per day and/or shift, increase the number of days worked per week, etc. However, this shall not be construed as permitting the CONTRACTOR to violate the OWNER'S work hour restrictions per Ordinance.
  - (c) Reschedule activities to expedite the work and eliminate the backlog of work.
- 9.05 Any requests for an adjustment in Contract Time shall be submitted by the CONTRACTOR in writing and shall include a Time Impact Analysis. Each Time Impact Analysis shall provide information justifying the request and stating the extent of the

## CONSTRUCTION AGREEMENT (Continued)

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adjustment requested for each specific change or alleged delay. This analysis shall be done at no additional cost to the OWNER.

### **ARTICLE X: CHANGES TO WORK**

- 10.01 OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by Change Orders. Upon receipt of a Change Order, CONTRACTOR shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price, or an extension or shortening of the Contract Time, an equitable adjustment will be made.
- 10.02 Engineer may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. If CONTRACTOR believes that any minor change or alteration authorized by Engineer entitles him to an increase in the Contract Price, CONTRACTOR may make a claim as provided by law.
- 10.03 Additional Work performed by CONTRACTOR without authorization of a Change Order will not entitle him to an increase in the Contract Price or an extension of the Contract Time.
- 10.04 CONTRACTOR will provide immediate notification to the Engineer upon discovering a condition that may require a change to the Contract Documents. The notification will include (1) a description of the condition, including the time and date it was identified; (2) an explanation of why the condition represents a change to the Contract Documents; and (3) a statement of all changes considered necessary to the Contract Price and Contract Time.

### **ARTICLE XI: ACCEPTANCE OF WORK**

- 11.01 OWNER will monitor the performance of CONTRACTOR against goals and performance standards required herein. Substandard performance as determined by OWNER will constitute non-compliance with this agreement. If action to correct such substandard performance is not taken by CONTRACTOR within a reasonable period of time as determined by the OWNER after being notified by OWNER, Contract suspension or termination procedures will be initiated.
- 11.02 All materials and parts or detail of the work are subject to inspection by the Engineer. The Engineer shall be allowed access to all of the Work and shall be furnished with such information and assistance by the CONTRACTOR as necessary to make a complete and detailed inspection.
- 11.03 Unacceptable work, whether the result of poor workmanship, defective materials, damage through carelessness or any other cause, found prior to final acceptance of work shall be removed and replaced in an acceptable manner at no additional cost to the OWNER.

## CONSTRUCTION AGREEMENT (Continued)

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- 11.04 Engineer will have authority to disapprove or reject Work which is "defective," which term is hereinafter used to describe Work that is unsatisfactory, faulty, or defective, or does not conform to the requirements of the Contract Documents, or does not meet the requirements of any inspection, test or approval, or has been damaged prior to approval of final payment. Engineer will also have authority to require a special inspection or testing of the Work, whether or not the Work is fabricated, installed or completed.
- 11.05 Until the acceptance of the work by Engineer, as evidenced in writing, it shall be under the charge and care of CONTRACTOR. He shall take every necessary precaution against damages to any party thereof by the action of the elements or from any other cause whether arising from the execution or from the non-execution of the work. Before final acceptance, CONTRACTOR shall at his expense rebuild, restore, repair and make good at his own expense all injuries or damages to any portion of the Work occasioned by any of the above causes.

### **ARTICLE XII: LIQUIDATED DAMAGES**

- 12.01 If the CONTRACTOR fails to complete the Work within the Contract Time and all approved Change Orders, a deduction calculated from the daily charges listed in the below schedule will be made from money due to the CONTRACTOR, not as penalty but as liquidated damages. The daily charges set out in the schedule of liquidated damages are based on an approximated average cost to the OWNER for maintaining engineers, inspectors and other employees. The CONTRACTOR and the CONTRACTOR'S Sureties shall be liable for all liquidated damages in excess of money due the CONTRACTOR.

Original Contract Amount		
From More Than	To and Including	Daily Charge Per Calendar Day
\$ 0.00	\$100,000.00	\$150.00
\$100,000.00	\$500,000.00	\$360.00
\$500,000.00	\$1,000,000.00	\$540.00
\$1,000,000.00	\$5,000,000.00	\$830.00
\$5,000,000.00	\$10,000,000.00	\$1,200.00
\$10,000,000.00	\$20,000,000.00	\$1,800.00
\$20,000,000.00	-----	\$3,500.00

**ARTICLE XIII: PERMITS**

- 13.01 CONTRACTOR is responsible for any permits, and is required to comply with all codes, ordinances, rules, regulations, orders and other legal requirements of public authorities which bear on performance of work.

**ARTICLE XIV: BONDS**

- 14.01 Within ten (10) days of receiving the Notice of Award, the CONTRACTOR shall execute and deliver to the OWNER a performance bond or bonds in a sum equal to the full Contract Price. The form of the bond(s) shall be that provided by the OWNER. The bond shall be negotiated for, procured from and the premium paid to a qualified surety agent as listed below. The bonds may be made by any surety company which is authorized to do business in the State of Mississippi and listed on the United States Treasury Department's list of acceptable sureties, or such bonds may be guaranteed by a personal surety as otherwise provided for in the Mississippi Code of 1972 as referenced below. The bond shall be signed or countersigned by a qualified surety agent and also bear the signature of an "attorney-in-fact" of the surety. (Reference is made to Section 31-5-51 et seq. of the Mississippi Code of 1972, Annotated, and other State statutes applicable thereto).
- 14.02 Except as otherwise provided herein, for a personal surety, no surety or surety company shall be allowed to guarantee or write bonds or construction, alteration or repair of a public building or for public work, unless that surety is listed on the United States Treasury Department's list of acceptable sureties.
- 14.03 If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, or is revoked, CONTRACTOR shall within five (5) days thereafter substitute another Bond and Surety, both of which shall be acceptable to OWNER.
- 14.04 Failure of the CONTRACTOR to provide an acceptable bond and all fully executed Contract Documents, within twenty (20) days of the mailing of the Notice of Award shall be just cause for the cancellation of the Contract. In the event the Contract is cancelled due to the failure of the CONTRACTOR to timely provide the bond and all fully executed Contract Documents, the CONTRACTOR'S proposal guaranty shall be forfeited. Award may then be made to the next lowest responsible bidder, or the work may be re-advertised at the discretion of the OWNER.
- 14.05 It is CONTRACTOR'S responsibility to notify his Surety of any changes affecting the general scope of the Work. CONTRACTOR shall furnish proof of such adjustment to OWNER.

**ARTICLE XV: LEGAL RELATIONS**

- 15.01 CONTRACTOR represents that he has made himself familiar with all state laws and local



## CONSTRUCTION AGREEMENT (Continued)

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ordinances and regulations which in any manner affect those engaged or employed in the Work or the material or equipment used in the proposed construction or which in any way affect the conduct of the work and no plea of misunderstanding will be considered on account of ignorance thereof.

- 15.02 The CONTRACTOR shall procure all permits, and licenses, pay all charges, fees and taxes and issue all notices necessary and incidental to the due and lawful prosecution of the work.
- 15.03 CONTRACTOR agrees to comply with the Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.
- 15.04 CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. CONTRACTOR will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting agency setting forth the provisions of this nondiscrimination clause.
- 15.05 CONTRACTOR agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours, the Hatch Act, the Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S. C. 276, 327-333) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Contract. CONTRACTOR shall maintain documentation, which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to OWNER for review upon request.
- 15.06 CONTRACTOR agrees to comply with the requirement of Miss. Code Ann. §31-5-27, the "Mississippi First Act." CONTRACTOR shall maintain documentation, which demonstrates compliance with the Mississippi First Act. Such documentation shall be made available to OWNER for review upon request
- 15.07 Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions, which are unsanitary, hazardous or dangerous to the participants' health or safety.

## CONSTRUCTION AGREEMENT (Continued)

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- 15.08 Participants employed or trained for inherently dangerous occupations, shall be assigned to work in accordance with reasonable safety practices.
- 15.09 CONTRACTOR agrees to comply with the following regulations insofar as they apply to the performance of this Contract (applies to Contracts or subcontracts in excess of \$100,000):
- (a) Clean Air Act, 42 U.S.C., 1857, et seq. (Amended to 42 U.S.C., 7602, et. seq.)
  - (b) Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended 1368 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
  - (c) Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 15, as amended.

### **ARTICLE XVI: PUBLIC CONVENIENCE AND SAFETY**

- 16.01 The CONTRACTOR shall provide and maintain adequate sanitation facilities for the use of his employees. The location of such accommodations shall be subject to the prior approval of the Engineer.
- 16.02 The CONTRACTOR shall be responsible for the preservation of public and private property. The CONTRACTOR shall be responsible for all damage or injury to public or private property resulting from any act, omission, neglect, misconduct, inefficiency, method of executing the work, or non-execution thereof or due to defective work or materials.
- 16.03 CONTRACTOR shall restore each job site at his own expense to a condition equal to that existing before the damage or injury. In the case of failure on the part of the CONTRACTOR to restore or make good such damage or injury, the Engineer may, upon forty-eight (48) hours written notice, proceed to repair, rebuild or otherwise restore such property and the cost thereof shall be deducted from monies due to which may become due the CONTRACTOR. In the event no monies are available, the amount shall be charged against the CONTRACTOR'S Surety.
- 16.04 CONTRACTOR shall require all workers to wear long pants, shirt, and shoes or boots at all times on the job site.
- 16.05 In the event of an approaching tropical storm, hurricane, etc., the CONTRACTOR shall, at the direction of the Engineer or his authorized representative, prepare the job site by securing any and all materials, equipment, etc. This includes anchoring any job trailer if it is to stay on the site during the storm. The CONTRACTOR shall assure the Engineer that the building is secure and watertight. The CONTRACTOR shall absorb all associated costs.

**ARTICLE XVII: PROGRESS AND FINAL PAYMENTS**

- 17.01 The compensation, as herein provided, constitutes full payment for the complete Work including all materials, labor, tools, equipment and incidentals necessary for performing the Work under this Contract.
- 17.02 CONTRACTOR shall submit pay requests in accordance with the section entitled "City of Biloxi Testing and Submittal Requirements" of the specification. All applications for payment shall be certified by the CONTRACTOR that to the best of CONTRACTOR'S knowledge, information and belief, the Work covered by the application for payment has been completed in accordance with the Contractor Documents, that all amounts have been paid by the CONTRACTOR for Work for which previous Certificates for Payment were issued and payments received for the OWNER, and that that the current payment shown in the pay application is now due. In addition, all applications for payment shall include certification to the project engineer or architect indicating payments to subcontractors on prior payment request, as required by Miss. Code of 1972, §31-5-25.
- 17.03 OWNER shall make progress payments on the basis of CONTRACTOR'S application for payment as approved by the ENGINEER during the course of this agreement. All progress payments will be on the basis of the approved progress of the work completed and stored to date measured by the schedule of values.
- 17.04 All partial, progress or interim payments or monies owed to CONTRACTOR shall be paid when due and payable under the terms of the Contract. If they are not paid within forty-five (45) calendar days from the date approved by the OWNER, then they shall bear interest in accordance with §31-5-24 of the Mississippi Code of 1972, Annotated.
- 17.05 The Engineer may refuse to approve the whole or any part of any payment if, in his opinion, he is unable to make such representations to the OWNER. Engineer may also refuse to approve any such payment, or because of subsequently discovered evidence or the result of subsequent inspection or tests, nullify any such payment, or any part of any payment, previously approved to such extent as may be necessary in his opinion to protect the OWNER from loss because:
- (a) Completed Work or existing property has been damaged by the CONTRACTOR or his Subcontractors, requiring replacement or repair;
  - (b) The Work for which payment is requested cannot be verified or was not verified by the OWNER at the time of payment, but subsequent verifications revealed discrepancies;
  - (c) The Engineer or his authorized representative verifies the Work and the OWNER pays for the Work, but subsequent discoveries reveal discrepancies between the Contract and the payment;

- (d) Claims or Liens have been filed, or there is reasonable evidence indicating the probable filing thereof;
  - (e) The Task price has been reduced because of Modifications;
  - (f) The OWNER has been required to correct defective Work, complete the Work, or maintain traffic control due to unsafe conditions;
  - (g) Of unsatisfactory prosecution of the Work, including failure to clean up the job site;
  - (h) Of persistent failure to carry out the Work in accordance with the Contract Documents;
  - (i) Of liquidated damages payable by the CONTRACTOR; or
  - (j) Of any other violation thereof, or failure to comply with, the provisions of the Contract Documents.
- 17.06 If, on the basis of Engineer's observation and review of the Work during construction, his inspection and his review of the Application for Payment, Engineer is satisfied that the Work has been completed and CONTRACTOR has fulfilled all of his obligations under the Contract and has made all corrections to remedy deficiencies in the Work, then the Engineer shall approve payment. Otherwise, he will return the application to CONTRACTOR, indicating in writing his reasons for refusing to approve payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application.

**ARTICLE XVIII: RETAINAGE**

- 18.01 Prior to fifty percent (50%) completion, progress payments will be in an amount equal to ninety-five percent (95%) of the work completed, and ninety-five percent (95%) of material and equipment not incorporated in the work but delivered and suitably stored, less than each case the aggregate of payments previously made.
- 18.02 Once fifty percent (50%) project completion has been obtained, but prior to final completion, progress payments will be in an amount equal to ninety-seven and one-half percent (97.5%) of the work completed, and ninety-seven and one-half percent (97.5%) of material and equipment not incorporated in the work but delivered and suitably stored, less than each case the aggregate of payments previously made; provided that the project is on schedule and all work is satisfactory in the opinion of the City Engineer. At fifty percent (50%) project completion, as described above, fifty percent (50%) of the retainage held to date shall be returned.
- 18.03 Upon final completion of the work and settlement of all claims, OWNER shall pay the remainder of all completed work plus any and all retainage provided the CONTRACTOR has submitted the Record Drawings.



- 18.04 When the Work is finally completed, the total cost to the OWNER will be computed. If the total cost is greater than the cost allowed under the Contract, the extra expense will be the responsibility of the original CONTRACTOR'S Surety. If the total cost is less than the cost which would have resulted under the Contract, the savings will be paid to the original CONTRACTOR'S Surety.

**ARTICLE XIX: FINAL ACCEPTANCE & WARRANTIES**

- 19.01 Upon written notice from the CONTRACTOR of substantial completion of all the major items of work or upon due notice from the Engineer a final inspection will be made by the City Engineer or his authorized representative. If all work provided by the Contract has been completed to his satisfaction, that inspection will constitute the final inspection. If the inspection discloses any work as being unsatisfactory or incomplete, the City Engineer or his authorized representative will discuss in detail with the CONTRACTOR all discrepancies in the work. Upon correction of the work, another inspection will be made which shall constitute the final inspection provided the work has been satisfactorily completed.
- 19.02 Prior to final payment being made, the CONTRACTOR will be required to submit to the City Engineer or his authorized representative, a maintenance guarantee to ensure against defects in workmanship or materials for a time period of two years from the date of final payment with the City of Biloxi named as the sole beneficiary. The guarantee shall be in any of the following acceptable forms:
- (a) Certified check from a Mississippi lender based upon a cash deposit, in a form acceptable to the City Attorney;
  - (b) Irrevocable letter of credit from a Mississippi banking institution in a form acceptable to the City Attorney; or
  - (c) Surety bond from a Mississippi surety bonding company in a form acceptable to the City Attorney.
- 19.03 CONTRACTOR shall guarantee all work under Contract for a period of two (2) years after the date of final payment by the OWNER for this project (the "Warranty Period").
- 19.04 If, prior to the expiration of the Warranty Period, or such a longer period of time as may be prescribed by law, any work is found to be defective, CONTRACTOR shall promptly without cost to the OWNER and in accordance with OWNER'S written instructions, either correct such defective work, or, if it has been rejected by the OWNER, remove it from the site and replace it with corrected work. If the CONTRACTOR does not promptly comply with the terms of such instructions, the OWNER may have the defective work corrected or the rejected work removed and replaced and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid for by the CONTRACTOR.

## CONSTRUCTION AGREEMENT (Continued)

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- 19.05 Except as otherwise provided herein, for a personal surety, no surety or surety company shall be allowed to guarantee or write bonds for construction, alteration or repair of a public building or for public work, unless that surety is listed on the United States Treasury Department's list of acceptable sureties.
- 19.06 The final payment will not be issued until after the final as-built drawings have been submitted, reviewed for accuracy and accepted. Final as-built drawings must be provided in both digital and hard copies. Digital files shall consist of a complete .PDF of the as-built drawings as well as the CADD files (.dgn, .dwg or .dxf format; Microstation or AutoCAD, latest versions acceptable to the OWNER). One (1) full-size hard copy shall also be provided. A digital copy of the original design drawings is available upon request.
- 19.07 As-built drawings in digital format shall have all field changes incorporated into the original Contract drawings. Hard copies of as-built drawings shall show the redlined field changes on the original Contract drawings. Redlines on hard copies shall stand out by color.

### **ARTICLE XX: RECORDS**

- 20.01 All CONTRACTOR records with respect to any matters covered by this agreement shall be made available to OWNER, grantor agency, the Comptroller General of the United States, their designees or the Federal Government, at any time during normal business hours, as often as OWNER or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by CONTRACTOR within thirty (30) days after receipt by CONTRACTOR. Failure of CONTRACTOR to comply with the above audit requirements will constitute a violation of this Contract and may result in the withholding of future payments.
- 20.02 CONTRACTOR shall retain all records pertinent to expenditures incurred under this Contract for a period of three (3) years after the termination of all activities funded under this agreement, or after the resolution of all Federal Audit Findings, whichever occurs later.
- 20.03 CONTRACTOR shall retain all records pertinent to subcontracts incurred under this Contract for a period of three (3) years after the termination of all activities funded under this agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Contract shall be retained for three (3) years after final disposition of such property.

### **ARTICLE XXI: INSURANCE REQUIREMENTS**

- 21.01 CONTRACTOR shall carry:
- (a) Commercial general liability insurance coverage (including subcontractors) with limits not less than \$1,000,000 each occurrence; \$2,000,000 aggregate (aggregate

## CONSTRUCTION AGREEMENT (Continued)

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applies to all work under this Contract); automobile liability - \$1,000,000 combined single limit-each accident;

- (b) Workers' Compensation and Employers' Liability with a waiver subrogation in favor of the City of Biloxi - Statutory & \$100,000 each accident; \$100,000 each employee; \$500,000 policy limit.

- 21.02 Each policy shall be signed or countersigned by a Mississippi Resident Agent of the insurance company.
- 21.03 CONTRACTOR further indemnifies and saves the OWNER harmless from and against any loss, damage and liabilities occasioned by, growing out of, or resulting from any default hereunder, relating to the execution of this agreement.
- 21.04 The CONTRACTOR shall name the City of Biloxi as an additional insured on the Certificate of Insurance furnished to the OWNER from the Insurance Company providing the required coverage. The certificate(s) shall be on the form furnished by the OWNER and will show the types and limits of coverage.
- 21.05 The CONTRACTOR shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Mississippi, property insurance written on a builder's risk "all-risk" policy in the amount of the Contract Price plus value of subsequent Change Orders, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained until the date of final payment. This insurance shall include coverage of the City of Biloxi, the CONTRACTOR, and Subcontractors in the Project. The form of policy for this coverage shall be Completed Value. If the CONTRACTOR fails to maintain such insurance, then the CONTRACTOR shall bear all repair costs to the project.
- 21.06 When any portion of the work to be completed under this Contract shall be performed on the navigable waters of the United States or in adjoining waterfront areas, CONTRACTOR shall provide evidence of coverage for The United States Longshore and Harbor Workers' Compensation Act with an insurance company rated by A.M. Best Company not less than A-X that is licensed and admitted to operate in the State of Mississippi.
- 21.07 Providing the types of insurance coverage to be described herein does not reduce nor relieve CONTRACTOR from his responsibility for any losses not covered by insurance.

### **ARTICLE XXII: TERMINATION OF CONTRACT**

- 22.01 OWNER may terminate this Contract at any time by giving written notice to CONTRACTOR of such termination and specifying the effective date thereof. Partial terminations of the Specifications or Proposal Document may only be undertaken with the prior approval of OWNER. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or

other materials prepared by CONTRACTOR under this agreement shall, at the option of OWNER, become the property of OWNER, and CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination. Upon termination for convenience, the payment made to CONTRACTOR will be based upon approved units completed. OWNER may also suspend or terminate this Agreement, in whole or in part, if CONTRACTOR materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and OWNER may declare CONTRACTOR ineligible for any further participation in OWNER Contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe CONTRACTOR is in noncompliance with any applicable rules or regulations, OWNER may withhold up to fifteen (15) percent of said Contract funds until such time as CONTRACTOR is found to be in compliance by OWNER, or is otherwise adjudicated to be in compliance.

22.02 The Contract may be terminated for default by the OWNER for any of the following reasons:

- (a) Failure to proceed with the Work when so instructed by the OWNER or to adhere to the requirements of the Contract.
- (b) Failure to perform the Work with sufficient workmen, equipment and materials to assure completion within Contract Time.
- (c) Performing unacceptable Work, or neglecting or refusing to remove materials or to perform anew such Work as may be rejected as unacceptable.
- (d) Discontinuing the prosecution of Work.
- (e) Violation of labor provisions and special regulations.
- (f) Becoming insolvent, being declared bankrupt or committing any act of bankruptcy or insolvency.
- (g) Allowing a final judgment to stand unsatisfied.
- (h) Failure for any other cause whatsoever to carry on work in an acceptable manner.

22.03 Before the Contract is terminated, the CONTRACTOR and the Surety will be notified in writing by the OWNER of the conditions which make termination of the Contract imminent. If no effective effort has been made by the CONTRACTOR or his Surety to correct the conditions of which complaint is made within fifteen (15) calendar days after notice is given, the OWNER may declare the Contract terminated and notify the CONTRACTOR and his Surety accordingly.

22.04 Upon receipt of notice from the OWNER that the Contract has been terminated the

CONTRACTOR shall immediately discontinue all Work under the Contract.

- 22.05 After termination the OWNER will order the Surety to arrange for the prosecution of the Work. If the Surety does not proceed with the satisfactory prosecution of the work within twenty (20) calendar days from the date on which the Contract was terminated, the OWNER may proceed in any other lawful manner which will provide for the completion of the Work as planned. The Surety or the OWNER, at the Surety's expense will perform or arrange for necessary maintenance between the date of termination and the date that Work is resumed.

#### **ARTICLE XXIII: INDEMNIFICATION**

- 23.01 CONTRACTOR will indemnify and hold harmless OWNER, Engineer and their agents and employees from and against all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from omission of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
- 23.02 In any and all claims against OWNER and Engineer or any of their agents or employees by any employee of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 23.01 above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 23.03 CONTRACTOR shall, at its sole cost, defend all suits brought upon by such losses, and pay all costs and expenses incidental thereto, but the OWNER, or any of Indemnified Parties, so sued shall have the right at its/their option, to participate in the defense of any such suit, without relieving CONTRACTOR of any obligations hereunder.
- 23.04 CONTRACTOR'S obligations to indemnify under this Agreement shall survive termination or expiration of this Agreement.

#### **ARTICLE XXIV: DEFINITIONS**

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

- (a) Agreement - The written agreement between Owner and Contractor covering the Work to be performed; other Contract Documents are attached to the Agreement.



## CONSTRUCTION AGREEMENT (Continued)

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- (b) Bid - The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- (c) Bidder - Any person, firm or corporation submitting a Bid for the Work.
- (d) Bonds - Bid, performance and payment bonds and other Instruments of security, furnished by Contractor and his surety in accordance with the Contract Documents.
- (e) Change Order - A written order to Contractor signed by Owner authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after the execution of the Agreement.
- (f) Contract Documents - The Agreement, Addenda (whether issued prior to the opening of Bids or the execution of the agreement), Instructions to Bidders, Contractor's Bid, the Bonds, the Notice of Award, these General Conditions, the Supplementary Conditions, the Specifications, Drawings, Modifications, Notices to Proceed and Purchase Orders.
- (g) Contract Price – The price provided for in the Contract for a specifically described unit of work.
- (h) Contract Time – The period of time beginning upon execution of the Agreement between Owner and Contractor and continuing through until termination of the Agreement, including any option to extend the time.
- (i) Contractor - The person, firm or corporation with whom Owner has executed the Agreement.
- (j) Day – A calendar day is defined as any day shown in the calendar beginning and ending at midnight.
- (k) Drawings - The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by the Engineer and are referred to the Contract Documents.
- (l) Engineer - The person, firm or corporation named as such in the Agreement or the City Engineer for Biloxi, Mississippi.
- (m) Modification - (a) A written amendment of the Contract Documents signed by both parties, (b) a Change Order, (c) a written clarification or interpretation issued by Engineer, or (d) a written order for a minor change or alteration in the Work issued by Engineer. A Modification may only be issued after execution of the Agreement.
- (n) Notice of Award - The written notice by Owner to the apparent successful Bidder stating that upon compliance with conditions precedent to be fulfilled by him within

## CONSTRUCTION AGREEMENT (Continued)

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the time specified, Owner will execute and deliver the Agreement to him.

- (o) Notice to Proceed - A written notice given by Owner to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform his obligations under the Contract Documents on a specific segment of Work.
- (p) Owner - A public body or authority, corporation, association, partnership, or individual for whom the Work is to be performed.
- (q) Project - The entire construction to be performed as provided in the Contract Documents.
- (r) Resident Project Representative - The authorized representative of Engineer who is assigned to the Project site or any part thereof.
- (s) Shop Drawings - All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by Contractor, a Subcontractor, manufacturer, supplier or distributor and which illustrate the equipment, material or some portion of the Work.
- (t) Specifications - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work.
- (u) Subcontractor - An individual, firm or corporation having a direct Contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the site.
- (v) Substantial Completion - The date as certified by Engineer when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it was intended; or if there be no such certifications, the date when final payment is due.
- (w) Warranty Period – the period of time beginning on the date of OWNER's final payment to CONTRACTOR for this Project and extending for two (2) years from that date, during which CONTRACTOR shall guarantee all work under this Contract.
- (x) Work - Any and all obligations, duties and responsibilities necessary to the successful completion of the Project assigned to or undertaken by Contractor under the Contract Documents, including all labor, materials, equipment and other incidentals, and the furnishing thereof.

## **ARTICLE XXV: MISCELLANEOUS**

- 25.01 Remedies upon Default. Termination by either party of this Agreement shall not limit or otherwise effect the remedies of the non-defaulting or non-breaching party against the defaulting or breaching party. In the event that either party is in material default under any of the terms or conditions of this Agreement or has materially breached any of its representations or warranties in this Agreement, the non-defaulting or non-breaching party shall be entitled to pursue, in addition to any remedies specifically provided herein, all further remedies then available at law or in equity.
- 25.02 Successors and Assigns. The OWNER and CONTRACTOR each bind itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns, or such party, in respect to all covenants of this Agreement. Nothing expressed or referred to in this Agreement shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto, nor shall it be construed as giving any rights, legal or equitable, benefits, remedies, or claims under or with respect to this Agreement or any provision of this Agreement, to anyone other than the OWNER and CONTRACTOR.
- 25.03 Relationship of the Parties. CONTRACTOR'S relationship with the OWNER is that of an independent Contractor, and nothing in this Agreement is intended to, or shall be construed as creating a partnership, agency, joint venture, employment or similar relationship.
- (a) CONTRACTOR acknowledges that it and all its officers, employees, and agents is/are not an employee or agent of the OWNER for any purpose whatsoever. CONTRACTOR shall be responsible for all applicable I-9 and work eligibility verification, earnings reports and tax payments to government agencies, such as the U.S. Internal Revenue Service and the Social Security Administration including payment of all wages due its employees, insurance premiums, license fees, fingerprinting costs, outfitting expenses, and all other obligations and/or expenses of CONTRACTOR relative to its employees in performance of the duties under this Agreement.
  - (b) CONTRACTOR acknowledges that its personnel are not entitled to receive any of the fringe benefits received by the OWNER's employees, including but not limited to, Workers' Compensation Insurance.
  - (c) CONTRACTOR shall not have the authority to enter into any Contract on the OWNER's behalf, or to otherwise bind the OWNER to any agreement, unless expressly authorized to so do in writing.
  - (d) Because CONTRACTOR is an independent Contractor, the OWNER has no direction or control over Services to be performed hereunder, nor over CONTRACTOR'S personnel, and CONTRACTOR shall at all times remain the

CONSTRUCTION AGREEMENT (Continued)

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employer of its personnel performing the Services (and shall be liable for each of their actions, omissions or breaches). CONTRACTOR shall indemnify the OWNER from any claim made by any of CONTRACTOR'S personnel against the OWNER alleging rights or benefits as an employee of the OWNER.

- 25.04 Copyrights & Patents. If this Contract results in any copyrightable or patentable material, OWNER and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work for government purposes.
- 25.05 Non-Discrimination. All persons having a Contract with the City of Biloxi must adhere to the OWNER's policy concerning non-discrimination on the basis of race, color, religion, sex, age, sexual orientation, gender identity, national origin, veteran or disability status.
- 25.06 Notices. All notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); or (b) received or rejected by the addressee, if sent by certified mail, return receipt requested, addressed 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)

OWNER:  
The City of Biloxi, Mississippi:  
Attention: Mayor A. M. Gilich, Jr.  
140 Lameuse Street  
Biloxi, Mississippi 39530

With mandatory copies to:

City of Biloxi, Mississippi  
City Attorney / Contract Manager  
Post Office Box 429  
Biloxi, Mississippi 39533

CONTRACTOR:  
Continental Flooring Company  
Attention: \_\_\_\_\_  
9319 N. 94th Way  
Suite 1000  
Scottsdale, AZ 85258

CONSTRUCTION AGREEMENT (Continued)

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25.07 Governing Law and Jurisdiction.

- (a) Governing Law. The laws of the state of Mississippi shall govern the application and interpretation of this Agreement.
- (b) 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 OWNER submits to the personal jurisdiction of the courts in Harrison County, Mississippi.

25.08 Amendments. This Agreement may not be altered or amended, nor may rights hereunder be waived, except by writing executed by both parties.

25.09 Assignability. CONTRACTOR may not assign any of its rights or delegate any of its obligations under this Agreement without the prior express written consent of the OWNER. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the CONTRACTOR.

25.10 No Waiver of Warranties. Notwithstanding any provisions to the contrary that may be found in this Agreement or any other supplemental terms that may be referenced therein, any provision that seeks to limit the OWNER's recovery resulting from a breach of express or implied warranties shall be of no force or effect.

25.11 No Waiver of Damages. Notwithstanding any provisions to the contrary that may be found in the Agreement, or any other supplemental terms that may be referenced therein, any provision that seeks to limit the OWNER's recovery in any manner shall be of no force or effect.

25.12 Waiver of Jury Trial. The OWNER shall not be subject to the terms of any provision 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 OWNER.

25.13 Force Majeure. Neither party shall be liable for failure to perform or delay in performing any obligation under the Agreement 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 Agreement; 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.



- 25.14 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable for any reason, that provision shall be ineffective to the extent of such invalidity or unenforceability, and such invalidity or unenforceability shall not affect any other provision of this Agreement. If necessary, the parties shall negotiate in good faith to modify the Agreement to preserve (to the extent possible) their original intent.
- 25.15 Authority. The parties represent that they have full power and authority to enter into and perform this Agreement and the parties know of no Contract, agreement, promise or undertaking which would prevent the full corporate execution and performance of this Agreement, and the persons executing this Agreement on behalf of the parties are duly authorized to do so and have the authority to bind such parties.
- 25.16 Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter (including any letter of intent, memorandum of understanding or other such non-binding document).
- 25.17 Arbitration. The OWNER shall not be subject to the terms of any provision any supplemental terms that may seek to require the OWNER 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 OWNER.
- 25.18 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or email transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

*Signatures on following page*

CONSTRUCTION AGREEMENT (Continued)

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**OWNER:**

**CONTRACTOR:**

CITY OF BILOXI, MISSISSIPPI

CONTINENTAL FLOORING COMPANY

By: \_\_\_\_\_  
Name: A.M. Gilich, Jr.  
Title: Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTESTED TO BY:

\_\_\_\_\_  
Municipal Clerk



### 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 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, 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:**

Continental Flooring Company

Attention: \_\_\_\_\_

Address: 9319 N. 94th Way, Suite 1000

Scottsdale, AZ 85258

Telephone: (800) 825-1221

Email: \_\_\_\_\_

**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:

THE CITY OF BILOXI, MISSISSIPPI:

Continental Flooring Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: A. M. Gilich, Jr.

Title: Mayor

Date: \_\_\_\_\_

Contract Reference: \_\_\_\_\_