

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: **50**

Council Meeting Date: July 21, 2026

ITEM TITLE: RESOLUTION

INTRODUCED BY: Mayor Andrew "FoFo" Gilich

CONTACT PERSON: Richard Weaver, Chief Administrative Officer

Christy LeBatard, Director of Engineering

SUMMARY EXPLANATION:

Resolution authorizing entry into the Letter Agreement and General Conditions with Brown Mitchell & Alexander, Inc. for Capital Project No. 1102: Port & Pier Repairs

Resolution ☒ Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract ☒ Minutes _____ Plans/Maps _____ Deed _____ Lease _____

Other (Specify): Exhibit A: Letter Agreement and General Conditions
Exhibit B: Standard Addendum

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:

072126hcon

Resolution No.

RESOLUTION AUTHORIZING ENTRY INTO THE LETTER AGREEMENT AND
GENERAL CONDITIONS WITH BROWN MITCHELL & ALEXANDER, INC. FOR
CAPITAL PROJECT NO. 1102: PORT & PIER REPAIRS

WHEREAS, the City of Biloxi (the "City") created Capital Project No. 1102: Port & Pier Repairs ("Project 1102") for the purpose of making necessary repairs to the City's piers and other structures located in its ports and harbors, as needed;

WHEREAS, the goals of Project 1102 will require professional services to assess and estimate the cost of repairs and/or replacement of the bulkhead south of McElroy's Restaurant in the Biloxi Small Craft Harbor;

WHEREAS, Brown Mitchell & Alexander, Inc. ("BMA") is qualified to perform the services required by Project 1102;

WHEREAS, under the terms and conditions of the Letter Agreement and General Conditions (the "Agreement"), attached hereto as Exhibit "A," BMA will be compensated a total of Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00), plus expenses, for its services;

WHEREAS, the budget for Project 1102 contains sufficient funding to fulfill the City's obligations under the Agreement;

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

WHEREAS, it is the recommendation of Christy LeBatard, Director of Engineering, that the City enter into the Agreement with BMA to provide professional services in connection with Project 1102.

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, on behalf of the City of Biloxi, is hereby authorized to execute the Letter Agreement and General Conditions, attached hereto as Exhibit "A," with Brown Mitchell & Alexander, Inc. for professional services in connection with Capital Project No. 1102: Port & Pier Repairs, and the City's Standard Addendum to Contracts, attached hereto as Exhibit "B."

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



**BROWN, MITCHELL
& ALEXANDER, INC.**

CONSULTING ENGINEERS

401 Cowan Road, Suite A
Gulfport, MS 39507
228-864-7612

June 17, 2026

VIA E-Mail: clebatard@biloxi.ms.us

131 Rue Magnolia
Biloxi, MS 39530
228-436-7612

Ms. Christy Lebatard, P.E., Director
Department of Engineering
City of Biloxi
140 Lameuse Street
Biloxi, MS 39530



3221 Market Street
Pascagoula, MS 39567
228-436-7612

www.bmaengineers.com

**RE: Proposal for Preliminary Engineering
Biloxi Small Craft Harbor – Bulkhead Assessment
Biloxi, Mississippi**

Dear Ms. Lebatard:

Pursuant to your request, Brown, Mitchell & Alexander, Inc. (BMA) is pleased to submit this proposal to furnish professional engineering relative to the above referenced project. Services to be provided and the associated fees are detailed as follows:

Bulkhead Assessment and Opinion of Costs

BMA, in conjunction with our structural sub-consultant, Simpkins & Costelli, Inc., will provide a letter assessment and estimated cost of repairs and/or replacement of the bulkhead, south of McElroy's Restaurant, in the Biloxi Small Craft Harbor. In order to perform this task, a copy of the bulkhead construction drawings will be needed and the area of the bulkhead wall that is out of alignment will need to be exposed by the City.

FEE: \$7,500.00 Hourly Basis – Not to Exceed

The above fees are based in accordance with our Standard Hourly Rates Schedule (Attachment A). Any services requested outside the above referenced scope of services will be considered additional services, and billed as such. Reimbursable expenses are in addition to fees for services and will be billed accordingly. Attachment B, BMA's General Conditions for Engineering, Surveying & Environmental Activities, is attached to and a part of this agreement. Invoices are submitted monthly and payment shall be made upon receipt of and in accordance with BMA's itemized invoice.

If this letter satisfactorily sets forth our agreement for these services, please execute in the space provided below and return same via email to our Director of Business Management, Michelle Phillips, at michelle@bmaengineers.com for our records.

Should you have any questions or comments, please feel free to contact myself or Kevin Mullen, P.E. at (228) 436-7612.

Sincerely,

Benjamin Smith, P.E.
Vice President

Attachments

**ACCEPTED & AGREED TO ON THIS ____ DAY
OF _____, 2026.**

CITY OF BILOXI

BY: _____

TITLE: _____

ATTACHMENT A

BROWN, MITCHELL & ALEXANDER, INC. STANDARD HOURLY RATES - 2026

Engineering Staff

Engineer Technician / Co-Op	\$64.00
Engineer Technician II	\$76.00
Graduate Engineer I	\$100.00
Engineer Intern	\$130.00
Graduate Engineer II	\$111.00
Professional Engineer I	\$165.00
Professional Engineer II	\$181.00
Professional Engineer III	\$193.00
Professional Engineer IV	\$204.00
Principal Engineer	\$240.00

Geological & Environmental Staff

Registered Professional Geologist	\$148.00
Environmental Scientist	\$102.00
Graduate Geologist	\$70.00

Project Representation Staff

Resident Project Representative I	\$104.00
Resident Project Representative II	\$111.00
Resident Project Representative III	\$117.00

OVERTIME:

Resident Project Representative I	\$121.00
Resident Project Representative II	\$128.00
Resident Project Representative III	\$137.00

Drafting Staff

Drafting Technician I	\$84.00
Drafting Technician II	\$108.00
CADD Designer	\$140.00

Alternate personnel may be utilized at their regular hourly rates, which will not exceed listed rates.

These hourly rates are subject to an annual increase of up to 5%.

Prepared: January, 2026

ATTACHMENT A

BROWN, MITCHELL & ALEXANDER, INC. STANDARD HOURLY RATES - 2026

Surveying Staff

Survey Technician	\$80.00
Survey Crew Chief I	\$96.00
Survey Crew Chief II	\$107.00
Professional Land Surveyor I	\$113.00
Professional Land Surveyor II	\$160.00
1-Man Survey Crew	\$167.00
2-Man Survey Crew	\$184.00
3-Man Survey Crew	\$206.00
UAS Pilot / LIDAR Data Processor	\$152.00

OVERTIME:

1-Man Survey Crew	\$175.00
2-Man Survey Crew	\$206.00
3-Man Survey Crew	\$237.00

Administrative Staff

Administrative I	\$58.00
Administrative I / Spec Tech	\$73.00
Administrative II	\$92.00
Administrative II / Spec Tech	\$92.00
Director of Business Management	\$103.00

Equipment Charges

Drone – LIDAR (Day Rate)	\$1,050.00
10' Skiff w/o Motor(Day Rate)	\$250.00

Alternate personnel may be utilized at their regular hourly rates, which will not exceed listed rates.

These hourly rates are subject to an annual increase of up to 5%.

Prepared: January, 2026

ATTACHMENT B

BROWN, MITCHELL & ALEXANDER, INC. GENERAL CONDITIONS FOR ENGINEERING, SURVEYING & ENVIRONMENTAL ACTIVITIES

1. PARTIES AND SCOPE OF WORK: Brown, Mitchell & Alexander, Inc. ("BMA") shall include said company, or its particular division, subsidiary or affiliate performing the work. "WORK" means the service(s) performed by BMA for Client or at Client's direction. "This agreement" consists of BMA's proposal, BMA's Schedule of Fees and Services, Client's written acceptance thereof if accepted by BMA, and these General Conditions. "Client" refers to the person or business entity ordering the work to be done by BMA. If the Client is ordering work on behalf of another, Client represents and warrants that Client is the duly authorized agent of said party for the purpose of ordering and directing said work and in such case the term "Client" also includes the principal for whom the work is being performed. Prices quoted and charged by BMA for its work are predicated upon the conditions and the allocations of risks and obligations expressed in this agreement. Unless this agreement specifically provides that BMA is to perform its work pursuant to specified Federal, State or local regulations, Client assumes sole responsibility for determining whether the quantity and the nature of the work ordered by Client is adequate and sufficient for Client's intended purpose. Client shall communicate these General Conditions to each and every third party to whom Client transmits any part of BMA's work. BMA shall have no duty or obligation to any party other than those duties and obligations expressly set forth in this agreement. Ordering work from BMA shall constitute acceptance of the terms of this agreement.

2. SCHEDULING OF WORK: The services set forth in BMA's proposal and Client's acceptance will be accomplished in a timely and workmanlike manner by BMA personnel. If BMA is required to delay any part of its work to accommodate the requests or requirements of Client, regulatory agencies, or third parties or due to any causes beyond the direct reasonable control of BMA, additional charges may be applicable, which Client agrees to pay.

3. ACCESS TO SITE: Client will arrange and provide access to each site upon which it will be necessary for BMA to perform its work. In the event work is required on any site not owned by Client, Client represents and warrants to BMA that Client has obtained all necessary permissions for BMA to enter upon the site and conduct its work. Client shall, upon request, provide BMA with evidence of such permission as well as acceptance of the other terms and conditions set forth herein by the owner(s) and tenant(s), if applicable, of such site(s) in form acceptable to BMA. Any work performed by BMA with respect to obtaining permission to enter upon and do work on the lands of others as well as any work performed by BMA pursuant to this agreement shall be deemed as being done on behalf of Client and Client agrees to assume all risks thereof. BMA shall take reasonable measures and precautions to minimize damage to each site and any improvements located thereon as the result of its work and the use of its equipment; however, BMA has not included in its fee the cost of restoration of damage which may occur. If Client or the possessor of any interest in any site desires or requires BMA to restore site to its former conditions, upon written request of Client, BMA will perform such additional work as is necessary to do and Client agrees to pay to BMA the cost thereof.

4. CLIENT'S DUTY TO NOTIFY ENGINEER: Client represents and warrants that he has advised BMA of any known or suspected hazardous materials, utility lines, and pollutants at any site at which BMA is to do work hereunder, and unless BMA has assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits, Client agrees to defend, indemnify and save BMA harmless from all claims, suits, losses, costs and expenses, including reasonable attorneys fees as a result of personal injury, death or property damage occurring with respect to BMA's performance of its work and resulting to or caused by contact with subsurface or latent objects, structures, lines or conduits where the actual or potential presence and location thereof was not revealed to BMA by Client.

5. **PUBLIC RESPONSIBILITY:** Both the Client and BMA owe a duty of care to the public and to the environment that requires them to conform to applicable codes, standards, regulations and ordinances, principally to protect the public health and safety and the environment. The Client shall make no request of BMA that, in BMA's reasonable opinion, would be contrary to BMA's professional responsibilities to protect the public and the environment. The Client shall take all actions and render all reports required of the Client in a timely manner. Should the Client fail to take any required actions or render any required notices to appropriate governmental authorities in a timely manner, the Client agrees that BMA has the right to exercise its professional judgment in reporting to appropriate public officials or taking other necessary action. The Client agrees to take no action against or attempt to hold BMA liable in any way for carrying out what BMA reasonably believes to be its public responsibility. In addition, the Client agrees that BMA shall not be held liable in any respect for reporting said conditions. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless BMA, its officers, directors, employees and sub-BMAs against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with BMA's notifying or failing to notify appropriate public officials.

6. **LIMIT OF LIABILITY CLAUSE:** In recognition of the relative risks and benefits of the Project to both the Client and BMA, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of BMA to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of BMA to the Client shall not exceed \$50,000, or BMA's total fee for services rendered on this Project, whichever is less. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

7. **STATUTE OF LIMITATIONS:** Statute of Limitations will commence to run at the Date of Substantial Completion of the Work. The Client and BMA hereby agree that any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all event not later than the relevant Date of Substantial Completion of the Work.

8. **INDEMNITY:** In the event that the Client or the Client's principal shall bring any suit, cause of action or counterclaim against BMA, to the extent that BMA shall prevail, the party initiating such action shall pay to BMA the costs and expenses incurred to answer and or defend such action, including reasonable attorney's fees and court costs. In no event shall BMA indemnify any other party for the consequences of the party's negligence, including failure to follow BMA's recommendations.

9. **PAYMENT:** Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause in writing within said thirty (30) day period at the maximum interest rate permitted under applicable law, until paid. Client agrees to pay BMA's cost of collection of all amounts due and unpaid after thirty (30) days, including court costs and reasonable attorney's fees. BMA shall not be bound by any provision or agreement requiring or providing for arbitration of disputes or controversies arising out of this agreement, any provision wherein BMA waives any rights to a mechanics' lien, or any provision conditioning BMA's right to receive payment for its work upon payment to Client by any third party. These general conditions are notice, where required, that BMA shall file a lien whenever necessary to collect past due amounts.

10. **TERMINATION:** This agreement may be terminated by either party upon seven (7) day's prior written notice. In the event of termination, BMA shall be compensated by Client for all services performed up to and including the termination date, including reimbursable expenses.

11. **WITNESS FEES:** BMA's employees shall not be retained as expert witnesses except by separate, written agreement. Client agrees to pay BMA pursuant to BMA's then current fee schedule for any BMA employee subpoenaed by any party as an occurrence witness as a result of BMA's work.

12. **HAZARDOUS MATERIALS:** Client assumes full responsibility for compliance with the provisions of the Resource Conservation and Recovery Act, 42 USCA, Sec. 6901, seq., as amended ("RCRA") and any other Federal or State statute or regulation governing the handling, treatment, storage and disposal of pollutants.

13. LIMITATIONS OF PROCEDURES, EQUIPMENT AND TESTS: Information obtained from field observations, analysis and testing of sample materials shall be accurately reported on boring logs. Such information is considered evidence with respect to the detection, quantification and identification of pollutants, but any inference or conclusion based thereon is necessarily an opinion also based upon engineering judgement and shall not be construed as a representation of fact. Ground water levels and composition may vary due to seasonal and climatical changes and extrinsic conditions and, unless samples and testing are conducted over an extended period of time pollutants contained therein may escape detection. A site at which pollutants are not found to exist or at the time of the field observation do not, in fact, exist, may later, due to intervening causes such as natural ground water flows or human intervention, become contaminated. There is a risk that sampling techniques may themselves result in contamination of certain subsurface areas such as when a probe or boring device moves through a contaminated area linking it to an aquifer, underground stream or other hydrous body not previously contaminated and capable of transporting pollutants. Because the risks set forth in this paragraph are unavoidable and because the sampling techniques to be employed are a necessary aspect of BMA's work on Client's behalf, Client agrees to assume these risks.

14. DISCOVERY OF UNANTICIPATED ENVIRONMENTAL CONDITIONS: The discovery of certain environmental conditions may make it necessary for BMA to take immediate measures to protect health and safety and the environment. BMA agrees to notify Client as soon as practically possible should such environmental conditions be suspected or discovered. Client agrees to reimburse BMA for the reasonable cost of implementing such measures under the circumstances.

15. SOIL AND SAMPLE DISPOSAL: Unless otherwise agreed in writing, soils known at the time to be contaminated will be placed in containers, labeled and left on the site for proper disposition by Client; and samples removed by BMA to a testing laboratory will, upon completion of testing, be disposed of by the testing laboratory in an approved manner.

16. DELIVERY OF ELECTRONIC FILES: In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by BMA, the Client agrees that all such electronic files are instruments of service of BMA, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights. The Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project and agrees not to transfer these electronic files to others without the prior written consent of BMA. The Client further agrees to waive all claims against BMA resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than BMA. The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by BMA and electronic files, the signed or sealed hard-copy construction documents shall govern. In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless BMA, its officers, directors, employees and sub-BMAs against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising from any changes made by anyone other than BMA or from any reuse of the electronic files without prior written consent of BMA.

Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by BMA, and BMA makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall BMA be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

17. SITE SAFETY: BMA's site responsibilities are limited solely to the activities of BMA and BMA's employees on site. These responsibilities shall not be inferred by any party to mean that BMA has responsibility for site safety. Safety in, on, or about the site is the sole and exclusive responsibility of the Contractor alone. The Contractor's methods of work performance, superintendence of the Contractor's employees, and sequencing of construction are also the sole and exclusive responsibilities of the Contractor alone. Client warrants that: 1) The Contractor's responsibilities will be made clear in Client's agreement with the Contractor; 2) Client's agreement with the Contractor shall require the Contractor to indemnify, defend, and hold Client and BMA harmless from any claim or liability for injury or loss arising from Client's or BMA's alleged failure to exercise site safety responsibility; and 3) Client's agreement with the Contractor shall require the Contractor to make Client and BMA additional insureds

under the Contractor's general liability insurance policy, which insurance protection shall be primary protection for Client and BMA. Given the foregoing, Client also shall, to the fullest extent permitted by law, waive any claim against BMA, and indemnify, defend, and hold BMA harmless from any claim or liability for injury or loss arising from BMA's alleged failure to exercise site safety responsibility. Client also shall compensate BMA for any time spent or expenses incurred by BMA in defense of any such claim. Such compensation shall be based upon BMA's prevailing fee schedule and expense reimbursement policy. (The term "any claim" used in this provision means "any claim in contract, tort, or statute alleging negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, or other acts giving rise to liability.")

18. CONSTRUCTION OBSERVATION: If included as a service or task in this agreement, BMA shall visit the site at intervals to the stage of construction, or as otherwise agreed to in writing by the Client and BMA, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow BMA to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Based on this general observation, BMA shall keep the Client informed about the progress of the Work and shall advise the Client about observed deficiencies in the Work. If the Client desires more extensive project observation or full-time project representation such as a Resident Project Representative (RPR), the Client shall request that such services be provided by BMA and such tasks may be included in the scope of services in the agreement. In any case, BMA shall not supervise, direct, or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

If construction observation is not included as a service in the agreement, it is understood and agreed that BMA's scope of services under this Agreement does not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided for by the Client. The Client assumes all responsibility for interpretation of the contract documents and for construction observation and the Client waives any claims against BMA that may be in any way connected thereto. In addition, the Client agrees to the fullest extent permitted by law, to indemnify and hold harmless BMA, its officers, directors, employees and any sub-consultants of BMA against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of BMA.

19. ENTIRE AGREEMENT: This agreement contains the entire understanding between the parties. Client acknowledges that no representations, warranties, undertakings or promises have been made other than and except those expressly contained herein. This agreement may be amended, modified or terminated only by a written instrument signed by each of the parties hereto.

The name and registration number of the professional engineer who will bear the primary responsibility for the engineering work on this project is: Dax B. Alexander, Mississippi Registration No. 14208; Louisiana Registration No. 37088; Alabama Registration No. 32625.

The name and registration number of the professional land surveyor who will bear the primary responsibility for the land surveying work on this project is: Christopher Seward, P.S., Mississippi Registration No. 3282.



CITY OF BILOXI STANDARD ADDENDUM

WHEREAS, the City of Biloxi (the "City"), 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's standard terms and conditions, as follows:

1. **Payment Terms:** The City will make payments in accordance with Miss. Code Ann. §§31-7-301, et seq.
2. **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.
3. **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.
4. **Governing Law:** Mississippi law shall govern the interpretation of the Contract and any dispute that may arise between the parties.
5. **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 submits to the personal jurisdiction of the courts in Harrison County, Mississippi.
6. **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's recovery resulting from a breach of express or implied warranties shall be of no force or effect.
7. **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's recovery in any manner shall be of no force or effect.
8. **Arbitration:** The City 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 to submit a dispute to arbitration; and, any such term(s) requiring same, shall be of no force or effect.
9. **Waiver of Jury Trial:** The City 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 of no force or effect.
10. **Indemnification:** The City shall not be subject to the terms of any provision contained in the Contract or any supplemental terms that may seek indemnification of any party by the City, and any such term(s) requiring same, shall be of no force or effect.
11. **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.

12. **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.

13. **Non-Discrimination:** All persons having a contract with the City 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.

14. **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:

Brown Mitchell & Alexander, Inc.

Attention: Dax Alexander

Address: 401 Cowan Road, Suite A

Gulfport, MS 39507

Telephone: (228) 864-7612 *

Email: dax@bmaengineers.com *

The City of Biloxi, Mississippi:

Attention: Mayor A.M. Gilich, Jr.

140 Lameuse Street

Biloxi, Mississippi 39530

Telephone: (228) 435-6254*

With a mandatory copy to:

City Attorney / Contract Manager

Post Office Box 429

Biloxi, Mississippi 39533

Telephone: (228) 435-6388*

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

Contracting Party:

Brown Mitchell & Alexander, Inc.

The City of Biloxi, Mississippi:

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: A. M. Gilich, Jr.

Title: Mayor

Date: _____

Contract Reference: _____