

# THE CITY OF BAY ST. LOUIS

## CONTRACT ADDENDUM

That Contract by and between The City of Bay Saint Louis, Mississippi (BSL) and \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, is amended by the parties through the following Addendum. The following terms will take precedence over all other parts of contracts to which BSL is a party:

1. References. In this addendum, BSL will be understood to mean The City of Bay Saint Louis, Mississippi, as intended in the body of the Contract.

2. Negligence Liability:

- a. BSL is a governmental entity pursuant to Mississippi law with sovereign immunity as modified by MISS. CODE ANN. § 11-46-1, *et seq.* (Mississippi Tort Claims Act), as amended, and the Mississippi Constitution, Article 4, Section 100. Any action against BSL will be followed in accordance with and subject to the limitations contained therein and does not waive any of the rights contained therein or as interpreted by the Mississippi Attorney General's Office. Currently, the limits of liability under the Act are \$500,000.00 with no punitive damages. Further, no employee of BSL acting in the course and scope of his/her employment can be held personally liable under the Act, MISS. CODE ANN. § 11-46-7, *et seq.*
- b. BSL is subject only to the jurisdiction of Mississippi state and federal courts. Mississippi law will be applied in all aspects. Accordingly, any provisions attempting to apply the laws of any state other than the State of Mississippi are hereby voided. The courts located in Hancock County, Mississippi, 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 Hancock County, Mississippi. Any business or person doing business with BSL
- c. Any indemnification clause requiring indemnification is hereby voided and replaced by this Paragraph 2(c). Any indemnification clause requiring BSL to indemnify is hereby voided and replaced by this Paragraph 2(c). Each party agrees to be responsible for the negligent acts of its employees. It is the intention of the parties hereto that neither party will incur costs or expenses as a result of the negligence and resulting damage of employees of the other. Further, each party will be responsible for any other responsibility assumed by a party under this Contract and to that extent any such costs or expenses will be borne by that party.
- d. Any reference to attorney's fees to be paid by BSL is voided.

3. Insurance Requirements

- a. Any clause contained in the Contract requiring BSL to maintain professional liability or commercial general liability insurance is hereby voided.
- b. All liability issues will be resolved in accordance with the Mississippi Torts Claims Act as described above.
- c. BSL agrees to comply with the rules and regulations of the Mississippi Tort Claims Board for the maintenance of insurance/self-insurance.

4. Unavailability of Funds. In order to be excepted from the bid requirements set forth in MISS. CODE ANN. § 31-7-13, any contract for services must include a cancellation clause based on unavailability of funds. Accordingly, the Board of Trustees may cancel this Contract if BSL funds become unavailable during the term of this Contract. If this paragraph is exercised, there will be no further liability on the part of BSL once the notice of unavailability of funds is provided indicating the effective date of the cancellation of this Contract.
5. Arbitration. Any paragraph requiring BSL to submit to binding arbitration is hereby voided.
6. 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 BSL's recovery resulting from a breach of express or implied warranties shall be of no force and 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 BSL's recovery in any manner shall be of no force or effect.
8. Waiver of Jury Trial. BSL 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 BSL.
9. Force Majeure: Neither party shall be liable for failure to perform or delay in performing any obligation under the Contract if the failure or delay is caused by any circumstances beyond its reasonable control, including, but not limited to, acts of God, war, civil commotion or industrial dispute ("Force Majeure"). If such delay or failure continues for at least sixty (60) days, then either party may provide written notice to terminate the Contract; and, upon such termination, the parties will owe no further obligations to the other except with respect to any rights or obligations that may have accrued prior to termination.
10. Compliance with Applicable Laws/Standards. It is the intent of both parties that this Contract will be performed in compliance with all applicable statutes, rules, and regulations as promulgated by federal and state agencies or legislative authorities having jurisdiction over the parties.
11. Term/No Automatic Renewal. Unless otherwise specified in the Contract, the term of the Contract or any renewal term thereof shall not extend past the term of the current City Council of June 30, 2017. If the Contract does extend past that date, such contract will not be void, but voidable at the discretion of the following City Council.
12. Renewal/Extension of Term. Any extension or renewal may be subject to approval by the City Council and shall be subject to the terms of the BSL Contract Addendum in effect at that time.
13. 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.
14. Effective Date. It is agreed by both parties that this Contract is subject to the approval of the governing authorities of BSL and this Contract will become effective only if approved by the governing authorities.

**THE CITY OF BAY SAINT LOUIS, MISSISSIPPI**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

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

Name: (Mayor)

Date:

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

BY: \_\_\_\_\_

Name:

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