



PORT OF \_\_\_\_\_  
**GULFPORT**  
\_\_\_\_\_MISSISSIPPI

**Mississippi State Port Authority  
2510 14th Street, Suite 1450  
Gulfport, MS 39501**

**Request for Proposals  
For  
Investment Custodian Services Provider**

**RFP # 27-FD-04**

**Date: June 10, 2026**

**Mississippi State Port Authority  
2510 14th Street, Suite 1450  
Gulfport, MS 39501**

**INVITATION:**

The commercial seaport of the Port of Gulfport, operated and administered by the Mississippi State Port Authority ("MSPA" or "Port Authority"), an enterprise agency of the State of Mississippi, operating under Section 59-5-1 of the Mississippi Code of 1972, is seeking proposals for designation as the Port Authority's Investment Custodian Services Provider.

**DESCRIPTION:**

MSPA will receive proposals from Providers having specific experience and qualifications in the area identified in this solicitation. For consideration, the Provider must be a bank with over \$1 billion in assets under custody. Other information required by MSPA may be included elsewhere in this solicitation.

**SCOPE OF SERVICES**

The successful firm will assume responsibility as an investment custodian to ensure the safekeeping and settlement of the investment of idle funds in compliance with State and Federal laws. The Mississippi State Port Authority Investment Policy is attached to this RFP as Exhibit B. During the duration of this contract, idle funds under custody could range from zero dollars to \$180 million. The services are to be performed in accordance with the following goals:

- Ensure for the complete and accurate safekeeping, settlement, and reporting of activity on all investments in custody.
- Encourage and participate in effective communication between the MSPA, advisor/manager, and any other interested parties.
- Compliance with all applicable state, federal, and fiduciary laws as pertaining to the MSPA's investment portfolio.

**Authorized Investment Vehicles:**

The MSPA Investment Policy authorizes idle funds to be invested in accordance with Miss. Code Ann. § 27-105-33 (Rev. 2024). Below are investment vehicles currently authorized.

- United States Treasury bills, notes, and bonds
- Interest bearing demand deposits insured by the Federal Deposit Insurance Corporation (FDIC), and/or collateralized in accordance with state law.
- Federal agency Securities
- Mortgage-backed securities guaranteed as to the repayment of principal and interest by the United States Government

- Repurchase agreements and Mutual Funds invested in obligations of the US Government or its agencies and repurchase agreements fully collateralized by such obligations.
- Certificates of Deposit, the total of which shall not exceed 15% of the total portfolio, insured by the FDIC, and/or collateralized in accordance with state law.

## **DELIVERABLES:**

The successful Provider will furnish the following deliverables:

### **A. Recurring Reports and Statements**

1. Continuous online access for designated MSPA staff to current positions, transaction, and cash balances, available no less than twenty-three (23) hours per day, seven (7) days per week.
2. Monthly custodial statement, quarterly reconciliation report identifying and explaining any variance between Custodian records and Investment Advisor records, and year-end statements delivered not later than fifteen (15) business days after MSPA's fiscal year end.

### **B. Recurring Meetings**

1. Quarterly review meetings with MSPA Finance Director and other designees, conducted in person or by video conference at MSPA's election.
2. Annual presentation to the MSPA Board of Commissioners, scheduled at the request of the CEO/Executive Director.
3. Joint quarterly reconciliation call with MSPA staff and the MSPA Investment Advisory Services Provider.

### **C. Transactional Reporting**

1. Trade confirmations delivered no later than one (1) business day after settlement.
2. Failed trade notification delivered within one (1) business day of the failure.
3. Corporate action notifications delivered within one (1) business day of receipt, with action deadlines clearly identified.
4. Maturity, call, and redemption notifications delivered no less than thirty (30) days in advance where the event is known to the Provider.
5. Monthly income collection report (interest, principal, and dividend receipts).

### **D. Threshold and Exception Notifications**

The Provider shall provide written notification to the MSPA CEO/Executive Director, COO, and Finance Director within one (1) business day of any of the following events:

1. Aggregate balances under custody falling before any such threshold as may be established by MSPA in writing from time to time.

2. Collateralization of any FDIC deposit, certificate of deposit, or repurchase agreement falling below one hundred five percent (105%) of the average daily balance in excess of FDIC coverage as required by Miss. Code § 27-105-5 or by the MSPA Investment Policy.
3. Aggregate certificate of deposit holdings exceeding fifteen percent (15%) of the total portfolio in violation of Miss. Code § 27-105-33 or the MSPA Investment Policy.
4. Any unreconciled item exceeding twenty-five thousand dollars (\$25,000) remaining outstanding for more than two (2) business days.
5. Any failed trade or settlement event.

#### E. Cybersecurity and Data Incidents

The provider will notify the MSPA CEO/Executive Director, COO, and Finance Director within twenty-four (24) hours of confirmation of any cybersecurity incident, data breach, or unauthorized access affecting MSPA assets, account information, or transmission, and shall cooperate with MSPA in any subsequent investigation or notification obligations.

#### F. Compliance and Safekeeping Certifications

1. Quarterly written certification confirming that all MSPA assets are titled in the name of the Mississippi State Port Authority and segregated from the Provider's balance sheet.
2. Quarterly written certification of compliance with the certificate of deposit allocation limit set for in Miss. Code § 27-105-33.
3. Annual collateralization compliance certification for all FDIC deposits, certificates of deposit, and repurchase agreements held on behalf of MSPA, in accordance with Miss. Code §§ 27-105-5 and 27-105-6.
4. Written notification to MSPA within thirty (30) days of any amendment to Miss. Code §§ 27-105-33 or other Mississippi law that materially affects the safekeeping or settlement requirements applicable to the MSPA portfolio.

#### G. Audit and Operational Support

1. Audit confirmations and supporting documentation provided directly to MSPA's external auditors at no additional cost.
2. 1099 or tax-equivalent reporting, where applicable, delivered within statutory deadlines.
3. Coordination with MSPA's Investment Advisory Services Provider on trade settlement reconciliation and reporting.
4. Support of MSPA's year-end GAAP/GASB reporting requirements as reasonably requested by the Finance Director.

## H. Fee Transparency

1. Quarterly fee statement detailing assets under custody, transaction volume, basis points or per-transaction charges, and total compensation.
2. Annual fee summary delivered no later than thirty (30) days after the fiscal year end.

### **SUBMITTAL INSTRUCTIONS:**

#### **\*\*\*THESE ITEMS MUST BE SUBMITTED WITH YOUR PROPOSAL.**

##### **A. COMPLETED EXHIBIT A – SUBMISSION FORM**

- All information on the submission form must be completed. Incomplete or unsigned forms may be rejected.

##### **B. PHILOSOPHY STATEMENT**

- Provide a statement indicating the underlying philosophy of the Provider in providing the service.

##### **C. PROPOSAL**

- Describe in detail how the service will be provided. Include a description of major tasks and subtasks, including the descriptions of
- How the Provider firm will ensure that the investments held in custody are titled in the name of Mississippi State Port Authority and will be segregated from investments appearing on the Provider firm's balance sheet.
- Experience with maintaining custodian relationships for governmental entities within the State of Mississippi
- Familiarity with Mississippi laws regarding investments for state entities and those specific to MSPA
- Location and availability to MSPA offices and staff
- Online services available to MSPA staff
- Types of documentation and reports that will be provided to the MSPA.
- Fee structure and the method by which fees and expenses are determined.
- Conflict-of-Interest Policy Statement

##### **D. ACCEPTANCE OF CONDITION**

Indicate any exceptions to the General Terms and Conditions of the proposal document or any other requirements listed.

## **E. QUALIFICATIONS OF PROVIDERS:**

- Background of the company, to include name, location of principal place of business, the place of performance of the proposed contract, and date of incorporation.
- Age and size of business.
- The abilities, qualifications, and experience of all persons who would be assigned to provide the required services.
- Provide at least three (3) references for governmental or non-profit clients where you provide custodian services for entities comparable to MSPA.

## **F. ADDITIONAL DATA**

- Provide any additional information that will aid in the evaluation of the response.

The Provider may be required before the award of any contract to show to the complete satisfaction of MSPA that it has the necessary facilities, ability, and financial resources to provide the services specified herein in a satisfactory manner. The Provider may also be required to give a history and references to satisfy MSPA regarding the Provider's qualifications. MSPA may make reasonable investigations deemed necessary and proper to determine the ability of the Provider to perform the work, and the Provider shall furnish to MSPA all information for this purpose that may be requested. MSPA reserves the right to reject any offer if the evidence submitted by, or investigation of, the Provider fails to satisfy MSPA that the Provider is properly qualified to carry out the obligations of the contract and to complete the work described therein.

Written proposals should be submitted to the Mississippi State Port Authority at Gulfport, Attn: Todd Harman, Director of Finance, 2510 14<sup>th</sup> St, Suite 1450, Gulfport, MS 39501, no later than **July 14, 2026, at 3:00 P.M. CST**. You may also submit your proposal electronically at [www.centralauctionhouse.com](http://www.centralauctionhouse.com) or [www.shipmspaprojects.com](http://www.shipmspaprojects.com). Timely submission of the proposal is the responsibility of the Provider. Any proposal submitted after the date and time as noted will not be considered by the MSPA.

If you wish to hand deliver your proposal, please provide 1 (one) original and 1 (one) copy of the proposal, and all attachments shall be signed and submitted in a sealed envelope or package, and the envelope or package shall be marked "Investment Custodian Services Provider" in the lower left-hand corner. Each page of the proposal and all attachments should be identified with the name of the Provider. For purposes of this RFP, "sealed" shall mean that the envelope or package is enclosed in such a manner that it is readily discernible from a visual inspection whether such envelope or package has been opened subsequent to its being sealed.

## **AGREEMENT**

The terms and conditions expressed in the Investment Custodian Services Provider Agreement attached hereto as Exhibit "C" are subject to change by the MSPA prior to a contract being entered with the successful Provider.

Please specify all of the obligations of the "Investment Custodian Services Provider" listed in the Exhibit "C" Agreement that your firm will not be able to perform. Please note that a submittal that

includes terms and conditions that do not conform to the terms and conditions in the Investment Custodian Services Provider Agreement is subject to rejection. MSPA reserves the right to permit the respondent to withdraw nonconforming terms and conditions from its proposal prior to a determination by MSPA of unacceptability based on the submission of nonconforming terms and conditions.

**TERM AND EXTENSION OF CONTRACT:**

The MSPA anticipates awarding a contract for services in July 2026 for services beginning on or near July 1, 2026, for a total of three (3) years with two (2) renewal options of 1 year each, subject to annual review.

**EVALUATION PROCEDURE AND FACTORS TO BE CONSIDERED IN THE EVALUATION PROCESS:**

A committee made up of qualified MSPA staff shall review and evaluate all responses to determine whether responses are acceptable, potentially acceptable, or unacceptable. The committee will have only the response to this RFP to review for the selection of finalists. It is, therefore, important for respondents to emphasize specific information pertinent to the work.

**STEP I:** Proposals will be reviewed by the foregoing committee to ensure compliance with the minimum specifications. Proposals which do not comply with the minimum specifications will be deemed unacceptable and rejected immediately, receiving no further consideration.

**STEP II:** Proposals, which satisfactorily complete Step I, will be reviewed and analyzed by the MSPA Board of Commissioners or MSPA Staff to determine if the proposal adequately meets the needs of the MSPA. Factors to be considered are as follows:

- A. The overall quality of the proposed plan for providing the required services. (Important)
- B. Understanding of the RFP and its objectives. (Very Important)
- C. The degree of completeness of response to the specific requirements of the solicitation. (Important)
- D. Provider's ability to provide the required services as reflected/evidenced by qualifications (education, experience, etc.). (Critical)
- E. A record of past performance of similar work. Direct experience in Mississippi is desirable. (Critical)
- F. The personnel, equipment, and financial resources to perform the services currently available or demonstrated to be made available at the time of contracting. (Critical)
- G. Price. (Important)
- H. Location. (Important)

**STEP III:** The MSPA's Procurement Officer will contact the Provider which best meets MSPA's needs (based on factors evaluated in STEP II and the interview process, if applicable) and attempt to negotiate an agreement that is acceptable to both parties.

PROVIDERS SHOULD MARK ANY AND ALL PAGES OF THE PROPOSAL CONSIDERED TO BE PROPRIETARY INFORMATION WHICH MAY REMAIN CONFIDENTIAL IN ACCORDANCE WITH MISS. CODE ANN. §§ 25-61-9 AND 79-23-1. THE PROVISIONS OF THE PROPOSAL WHICH CONTAIN THE SERVICES PROVIDED, THE PRICE TO BE PAID, AND THE TERM OF THE CONTRACT SHALL NOT BE DEEMED TO BE A TRADE SECRET OR CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION AND SHALL BE AVAILABLE FOR EXAMINATION, COPYING, OR REPRODUCTION IN ACCORDANCE WITH MISS. CODE ANN. § 25-9-120 AND THE MISSISSIPPI PUBLIC RECORDS ACT.

IF A PUBLIC RECORDS REQUEST IS MADE FOR ANY INFORMATION PROVIDED TO THE MSPA IN CONNECTION WITH OR WITH REGARD TO THIS RFP, THE MSPA SHALL FOLLOW THE PROVISIONS OF MISS. CODE ANN. §§ 25-61-9 AND 79-23-1 BEFORE DISCLOSING SUCH INFORMATION. ANY INFORMATION NOT DESIGNATED AS "CONFIDENTIAL INFORMATION" BY THE PROVIDER IN STRICT COMPLIANCE WITH THIS SECTION SHALL BE SUBJECT TO DISCLOSURE AS A PUBLIC DOCUMENT, INCLUDING, BUT NOT LIMITED TO, A DISCLOSURE IN ACCORDANCE WITH A PUBLIC RECORDS REQUEST MADE PURSUANT TO THE MISSISSIPPI PUBLIC RECORDS ACT. THE MSPA SHALL NOT BE LIABLE TO THE PROVIDER FOR DISCLOSURE OF INFORMATION REQUIRED BY LAW (INCLUDING THE MISSISSIPPI PUBLIC RECORDS ACT), BY COURT ORDER, OR FOR ANY INFORMATION THAT THE PROVIDER FAILS TO DESIGNATE AS "CONFIDENTIAL INFORMATION" IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION, INCLUDING THE CLEAR AND CONSPICUOUS MARKING THEREOF.

#### **REJECTION OF PROPOSALS:**

Proposals which do not conform to the requirements set forth in this RFP may be rejected by the MSPA. Proposals may be rejected for reasons that include, but are not limited to, the following:

- A. The proposal contains unauthorized amendments to the requirements of the RFP;
- B. The proposal is conditional;
- C. The proposal is incomplete or contains irregularities which make the proposal indefinite or ambiguous;
- D. The proposal is not received by the deadline;
- E. The proposal is not signed by an authorized representative of the party;
- F. The proposal contains false or misleading statements or references; or
- G. The proposal fails to satisfy the MSPA that the Provider is properly qualified to carry out the obligations of the contract and to complete the work described therein in a prompt, safe, and lawful manner.

#### **ACCEPTANCE OF PROPOSALS:**

The MSPA reserves the right, in its sole discretion, to waive minor irregularities in proposals. A minor irregularity is a variation of the RFP, which does not affect the funding request, or give one party an advantage or benefit not enjoyed by other parties, or one that does not adversely impact the interests of the MSPA. Waivers, when granted, shall in no way modify the RFP requirements or excuse the

party from full compliance with the RFP specifications and other contract requirements, if the party is awarded the contract.

**DISPOSITION OF PROPOSALS:**

All submitted proposals become the property of the MSPA.

**COMPETITIVE NEGOTIATION:**

The procurement method to be used is a competitive negotiation from which the MSPA is seeking the best combination of price, experience, and quality of service. Discussions may be conducted with firms who submit proposals determined to be reasonably susceptible of being selected for award. Likewise, the MSPA also reserves the right to accept any proposal as submitted to contract award, without substantive negotiation of offered terms, services, or prices. Therefore, all parties are advised to propose their most favorable terms initially.

**RFP DOES NOT CONSTITUTE ACCEPTANCE OF OFFER:**

The release of the RFP does not constitute an acceptance of any offer, nor does such release in any way obligate the MSPA to award a contract or obligate funds. The MSPA reserves the right, in its sole discretion, to accept, reject, or negotiate the terms of the contract, including the award amount, with the selected Provider prior to entering into any written agreement. If contract negotiations cannot be concluded successfully with the highest scoring Provider, the MSPA may elect to negotiate a contract with one or more of the next highest scoring Provider(s). The final decision to award funds to any party rests solely with the MSPA.

**NONCONFORMING TERMS AND CONDITIONS:**

A proposal, which includes terms and conditions not conforming to the terms and conditions in the RFP, is subject to rejection as being non-responsive. The MSPA reserves the right to permit the Provider to withdraw nonconforming terms and conditions from its proposal prior to a determination by MSPA of non-responsiveness based on the submission of nonconforming terms and conditions.

**EXPENSES INCURRED IN PREPARING OFFERS:**

The MSPA accepts no responsibility for any expense incurred by the Provider in the preparation and presentation of an offer. Such expenses shall be borne exclusively by the Provider.

**ACKNOWLEDGMENT OF AMENDMENTS:**

Providers shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the proposal. The acknowledgment must be received by the MSPA by the time and at the place specified for receipt of proposals.

**ADDITIONAL INFORMATION:**

Questions concerning this RFP must be submitted in writing to the Mississippi State Port Authority, Angela Shortt, Purchasing Administrator, 2510 14th Street, Suite 1450, Gulfport, MS 39501 or via email to [ashortt@shipmspa.com](mailto:ashortt@shipmspa.com). **Questions will be received through June 24, 2026, at 5:00 P.M. CST.** Responses to all questions will be distributed in writing via email to all interested parties. Providers are cautioned that any statements made by the contact person that materially change any portion of the RFP shall not be relied upon unless subsequently ratified by a formal written

amendment to this RFP.

## GENERAL TERMS AND CONDITIONS OF CONTRACT PROPOSAL:

The following terms and conditions will be included in any contract entered into by the MSPA for Investment Custodian Services Provider. By submitting a proposal, the Provider is consenting to the terms and conditions expressed herein. Other terms and conditions may be proposed by the MSPA prior to a contract being entered with a successful Provider. A draft of the services agreement is attached as Exhibit "C"

1. Termination for Default Clause--If, through any cause, the Provider fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Provider violates any of the covenants, agreements, or stipulations of this Contract, the MSPA will thereupon have the right to terminate this Contract by giving written notice to the Provider of such termination and specifying when the termination becomes effective. The Provider will be entitled to receive just and equitable compensation for any satisfactory work completed and delivered under the terms of this Contract.

Notwithstanding the above paragraph, the Provider will not be relieved of liability to the MSPA for damages sustained by the MSPA by virtue of any breach of this Contract by the Provider, and the MSPA may withhold any payments due to the Provider for the purpose of set-off until such time as the exact amount of damages due to the MSPA from the Provider is determined. Further, in the event the Provider fails to fulfill in a timely and proper manner any of its obligations in accordance with the terms of the Contract, the MSPA shall, in addition to any remedies available at law or in equity, have the right to procure the performance of such obligations from alternative sources and hold the Provider responsible for any additional costs or expenses incurred by the MSPA.

2. Termination for Convenience Clause--

A. *Termination.* The Procurement Officer of the MSPA may, when the interests of the MSPA so require, terminate this Contract in whole or in part, for the convenience of the MSPA. The Procurement Officer shall give written notice of the termination to the Investment Custodian Services Provider specifying the part of the Contract terminated and when termination becomes effective.

B. *Investment Custodian Services Provider's Obligations.* The Provider shall incur no further obligations in connection with the terminated work, and on the date set in the notice of termination, the Provider will stop work to the extent specified. The Provider must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so. The Provider shall be entitled to compensation for services performed up to the date of termination, which are or have been authorized and accepted by the MSPA.

3. Modification or Renegotiation--This Contract may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or State revisions of any applicable laws or regulations make modifications to this Contract necessary.
4. Anti-Assignment/Subcontracting--The Provider acknowledges that it was selected by the MSPA to perform the services required hereunder based, in part, upon the Investment Custodian Services Provider's special skills and expertise. The Provider shall not assign,

subcontract, or otherwise transfer this Contract in whole or in part without the prior written consent of the MSPA, which the MSPA may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void.

5. Interest of the Investment Custodian Services Provider and their Employees--The Provider covenants that neither it nor its employees presently have any interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The Provider further covenants that in the performance of this Contract, no person having such interest will be employed or otherwise utilized by the Provider.
  
6. Insurance—The Provider shall furnish to the MSPA a schedule or endorsement naming the State of Mississippi and the Mississippi State Port Authority at Gulfport, its Board of Commissioners, officers, agents, and employees as additional insureds on all policies except Worker's Compensation and Errors and Omissions Liability and shall provide that the insureds thereon waive subrogation against the State of Mississippi and the said political subdivisions thereof. The State of Mississippi and the Mississippi State Port Authority at Gulfport shall be named as certificate holders. The schedule or endorsement shall certify that the Provider carries the following insurance and at the specified limits:
  - A. Workers' Compensation Insurance in full compliance with all applicable State and Federal laws and regulations, including a specific endorsement covering liability under the Federal Longshoremen's and Harbor Workers Compensation Insurance, if required by the Act. Prior to commencing work, the Provider shall provide MSPA with a written statement or certificate indicating his or her compliance with this provision.
  
  - B. Employer's Liability Insurance in the minimum amount of One Million Dollars (\$1,000,000) for bodily injury by accident, disease, or in the aggregate, covering injury or death to any employee which may be outside the scope of or in addition to liability under any Workers Compensation statute or the Federal Longshoremen's and Harbor Workers Compensation Act.
  
  - C. Automobile Liability Insurance on all vehicles owned or operated on the MSPA's premises, with a combined single limit of one million dollars (\$1,000,000.00) per occurrence.

Each policy must be endorsed to reflect a thirty (30) day Notice of Cancellation in favor of the MSPA.

7. Personnel. The Provider represents that it has, or will secure, at its own expense, all personnel required in performing the services under this Contract. Such personnel will not be employees of or have any contractual relationship with the MSPA. All the services required hereunder will be performed by the Provider under its supervision, and all personnel engaged in the work will be fully qualified and will be authorized or permitted under State and local law to perform such services.
  
8. Ownership of Documents and Work Papers. The MSPA shall own all documents, files, reports, Work papers, and Working documentation, electronic or otherwise, created in connection with the Project which is the subject of this Contract, except for the Provider's internal administrative and quality assurance files and internal Project correspondence. The Provider shall deliver such documents and Work papers to MSPA upon termination or completion of this Contract. The foregoing notwithstanding, the Provider shall be entitled to retain a set of

such Work papers for its files. Provider shall be entitled to use such Work papers only after receiving written permission from MSPA and subject to any copyright protections.

9. Record Retention and Access to Records. Provided an inspection is made during normal business hours of the Provider, the MSPA or any duly authorized representatives shall have unimpeded, prompt access to any of the Provider's books, documents, papers, and/or records which are maintained or produced as a result of the Project for the purpose of making audits, examinations, excerpts, and transcriptions. The Provider shall retain all records related to this Contract for three (3) years after final payment is made under this Contract and all pending matters are closed. However, if any audit, litigation, or other action arising out of or related in any way to this Project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.
10. Debarment and Suspension Certification. Provider certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, 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 or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and (d) have, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.
11. Disputes--Any dispute concerning a question of fact under this Contract, which is not disposed of by agreement of the parties, shall be decided by the Executive Director of the MSPA or his designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute breach under the terms of this Contract. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.
12. Waiver--No delay or omission by either party to this Contract in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this Contract shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this Contract will void, waive, or change any other term or condition. No waiver by one party to this Contract of a default by the other party will imply, be construed as or require waiver of future or other defaults.
13. Severability--If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Contract that can be given effect without the invalid or unenforceable provision, and to this end, the provisions hereof are severable. In such event, the parties shall amend the Contract as necessary to reflect the in compliance with applicable law.

14. Applicable Law--The Contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions and, any litigation with respect thereto shall be brought in the courts of the State. The Provider shall comply with applicable federal, State, and local laws and regulations.
15. Compliance with Laws--The Provider understands that the MSPA is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful and the Provider agrees during the term of this Contract that the Provider will strictly adhere to this policy in its employment practices and provision of services. The Provider shall comply with, and all activities under this Contract shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now exist and as may be amended or modified.
16. Representation Regarding Gratuities--The Provider represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 7-204 (Gratuities) of the Mississippi Personal Service Contract Procurement Regulations.
17. Officials Not to Benefit. No member of or delegate to the Congress of the United States of America, and no Resident Commissioner, will be admitted to any share or part thereof or to any benefit to arise herefrom.
18. Availability of Funds--It is expressly understood and agreed that the obligation of the MSPA to proceed under this Contract is conditioned upon the appropriation of funds by the Mississippi State Legislature and the possession of surplus funds. If the funds anticipated for the continuing fulfillment of the Contract are, at any time, not forthcoming or insufficient, as determined by the MSPA in its sole and absolute discretion, the MSPA shall have the right upon ten (10) working days' written notice to the Provider, to terminate this Contract without damage, penalty, cost, or expenses to the MSPA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
19. Indemnification--The Provider will indemnify, defend, save and hold harmless, protect, and exonerate the State of Mississippi and the MSPA, including its officers, employees, and agents from and against all claims, demands, liabilities, suits, actions damages, losses, and any costs related thereto, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees resulting from any negligent acts or misconduct of the Provider, its agents, or employees. This indemnity obligation is intended to be, and shall be interpreted to be, a separate and independent contractual obligation from the contractual provisions addressing the requirements and placement of insurance, including, but not limited to, insurance covering the MSPA.
20. Third Party Action Notification—The Provider shall give the MSPA prompt notice in writing of any action or suit filed, and prompt notice of any claim against the Provider by any entity that may result in litigation related in any way to this Contract.
21. Attorney Fees. If the MSPA employs an attorney or attorneys to enforce the provisions of this Agreement and the MSPA is determined to be the prevailing party (whether by negotiations, settlement, or suit), the Provider shall be pay the MSPA's reasonable attorneys' fees incurred as a result of the dispute.

22. E-Payment--The selected Provider agrees to accept all payments in United States currency via electronic payment. Payment by paper check will not be offered. Mississippi State Port Authority agrees to make payment in accordance with Mississippi "Timely Payments for Purchases by Public Bodies" laws, which generally provides for payment of undisputed amounts within 45 calendar days of receipt of invoice. Mississippi Code Annotated § 31-7-301, et seq.
23. Representation Regarding Contingent Fees--The Provider represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fees, except as disclosed in the Provider's bid or proposal.
24. Certification of Independent Price Determination--The Provider certifies that the prices submitted in response to the solicitation have been arrived at independently and without—for the purpose of restricting competition—any consultation, communication, or agreement with any other competitor relating to those prices, the intention to submit a proposal, or methods or factors used to calculate the price proposal.
25. Whole Agreement. This Agreement, together with the proposal submitted by Provider, constitute the complete Agreement between the parties and supersedes all negotiations, representations or oral agreements reached prior to execution of the Agreement, including all terms of any unsigned or "shrink-wrap" license included in any package, media, or electronic version of Provider-furnished software, or any "click-wrap" or "browse-wrap" license presented in connection with a purchase via the Internet. The RFP No. 27-FD-04 and Provider's Proposal in response to RFP No. 27-FD-04 are hereby incorporated into and made a part of this Agreement.

END OF DOCUMENT

# Exhibit A

**MISSISSIPPI STATE PORT AUTHORITY  
INVESTMENT CUSTODIAN SERVICES PROVIDER**

**RFP#27-FD-04**

Company \_\_\_\_\_

Address \_\_\_\_\_

Contact Person \_\_\_\_\_

Telephone Number \_\_\_\_\_

Email \_\_\_\_\_

**NOTE: It is the Provider's responsibility to provide adequate information in their proposal package to enable the MSPA to ensure the proposal meets the required criteria. Items listed in the package shall be in the same order as listed in the specifications. Failure to do so could result in the rejection of the proposal.**

**EMPLOYEES NOT TO BENEFIT**

I (we) hereby certify that if the contract is awarded to our firm, partnership, or corporation, no employee of MSPA, or members of his/her family, including spouse, parents, or children has received or been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, political contribution or any similar form of remuneration on account of the act of awarding and/or executing this contract.

**CONFLICTS OF INTEREST**

The Provider  is  is not aware (mark one box) of any information bearing on the existence of any potential organizational conflict of interest. For the purposes of this declaration, the Contractor should refer to Mississippi Code § 25-4-101, et seq. including, without limitation, § 25-4-105, and any other applicable law concerning conflicts of interest.

**CONTINGENT FEES**

The prospective Provider represents as a part of such Provider's bid or proposal that such Provider  has  has not (mark one box) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

**COLLUSION**

I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for the same services, materials, supplies, or equipment and is in all respects fair and without collusion or fraud. I understand collusive bidding is

# EXHIBIT A

a violation of State and Federal laws and can result in fines, prison sentences, and civil damage awards. I hereby certify that the responses to the above representations, certifications, and other statements are accurate and complete. I agree to abide by all conditions of the proposal and certify that I am authorized to sign for my company.

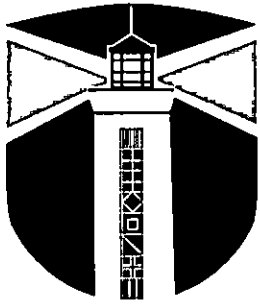
Signature: \_\_\_\_\_

Name (Printed): \_\_\_\_\_

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

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

# Exhibit B



PORT OF \_\_\_\_\_  
**GULFPORT**  
\_\_\_\_\_ MISSISSIPPI

**MSPA**  
**Investment Policy Statement**

**February 22, 2018**

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## Executive Summary

Name of Institution: Mississippi State Port Authority at Gulfport (MSPA)

Type of Funds: Investment Portfolio

Applicable State Statute: Sections 59-9-19(f) of the Mississippi Code of 1972, as Amended  
(See also Section 59-5-31)

Cash/Liquidity Constraints: As provided by the MSPA's Finance Director (FD)

## Scope & Purpose

This policy incorporates powers and limitations as established in the Mississippi Code per the sections listed below. References throughout the MSPA Investment Policy Statement (IPS) will use (a), (b) or (c) in referring to these MS Code sections.

- a) **59-9-19** TITLE 59. Ports, Harbors, Landings and Watercraft CHAPTER 9. County Port Authority or Development Commission SECTION 19. Additional Powers and authority of county
- b) **27-105-5** TITLE 27. Taxation and Finance CHAPTER 105. Depositories ARTICLE 1. State Depositories SECTION 5. Qualification as public funds depository; authority of State Treasurer; definitions
- c) **27-105-33** TITLE 27. Taxation and Finance CHAPTER 105. Depositories ARTICLE 1. State Depositories SECTION 33. Deposit and investment of excess state funds

The purpose of this Investment Policy Statement is to establish an overall structure and process for the management and investment of unexpended funds of the Mississippi State Port Authority at Gulfport, with the following goals.

- Establishment of the MSPA's expectations, objectives, and guidelines for the investment portfolio
- Establishing the investment structure for the management of the MSPA's investment portfolio; inclusive of the following: asset classes, security types, interest rate risk, duration, and credit risk
- Encourage effective communication between the MSPA, advisor/manager, custodian, and any other interested parties
- Compliance with all applicable state, federal, and fiduciary laws as pertaining to the MSPA's investment portfolio

## Statement of Investment Objectives

Unexpended funds in excess of 90 days' operating expenses, to the extent practicable, shall be invested in accordance with principles of sound investment management and in accordance with provisions of the Mississippi Code of 1972, as Amended, Section 59-9-19(f) and this Investment Policy.

The primary objectives, in order of priority, of the MSPA's investment program are:

1. Safety of invested funds – The MSPA seeks to ensure the safety of its invested funds by limiting credit and interest rate risks of invested assets.
2. Liquidity – Structure investments to complement the anticipated cash flow needs of the MSPA as provided by the FD. The MSPA's financial portfolio should be structured so that securities mature at approximately the same time that cash is needed to meet anticipated demands.
3. Investment Returns - The investment portfolio shall be designed with the overall objective of obtaining a total rate of return throughout economic cycles, commensurate with investment risk, constraints, and cash flow needs as delineated in the MS Code and this document.

## Delegation

The FD may engage the services of a Bank or Registered Investment Advisor (RIA), acting as a fiduciary on the MSPA's behalf, for the day-to-day management of the investment portfolio. The FD is responsible for ongoing oversight of any investment manager(s) and custodian(s) engaged on the MSPA's behalf and reporting on the MSPA's investment activities to executive management and the Board of Commissioners.

## Time Horizon

Subject to the safety provisions outlined above, the choice of investment instruments and maturities should be based upon an analysis of anticipated cash needs, existing and anticipated revenues, interest rate trends and specific market opportunities. Specific limitations are as follows:

- No investment will have a maturity of more than ten years from its date of purchase. (a)

## Authorized Investments (a) (c)

*(The current applicable MS Code sections should always be consulted as it relates to specific entities or investment vehicles.)*

- United States Treasury bills, notes, and bonds
- Interest bearing demand deposits insured by the Federal Deposit Insurance Corporation (FDIC), and/or collateralized in accordance with state law.
- Federal agency Securities

- Mortgage-backed securities guaranteed as to the repayment of principal by the United States Government
- Repurchase agreements and Mutual Funds invested in obligations of the US Government or its agencies and repurchase agreements fully collateralized by such obligations.
- Certificates of Deposit, the total of which shall not exceed 15% of the total portfolio, insured by the FDIC, and/or collateralized in accordance with state law.

### **Prohibited Investments and Activities (a) (b) (c)**

Any investment not specifically authorized by this investment policy is prohibited without the prior approval of the MSPA Board of Commissioners.

No representative of the MSPA or Investment Manager is authorized to engage in margin transactions, derivatives, nor reverse repurchase agreements on behalf of the MSPA.

### **Custody of MSPA Assets**

The MSPA shall engage a bank or trust company for the custody of investment securities, other than CDs held directly with a qualified depository, which are owned by the MSPA as part of its investment portfolio. All investments held by the custodian for the MSPA shall be evidenced by monthly holdings statements.

All security transactions entered into by the Investment Manager shall be conducted on a Delivery-Versus-Payment (DVP) basis. The authorization to release or transfer MSPA securities shall be provided in writing and signed by two (2) authorized signatories. Authorized MSPA officials are the MSPA Executive Director & Chief Executive Officer (CEO) and the FD. In the absence of the CEO, the Chief Operating Officer (COO) may act as an authorized signatory.

### **Responsibilities**

#### **Responsibilities of the MSPA FD & Finance Department**

The FD works for the MSPA Executive Director & CEO and is subject to his or her direction and supervision. The FD is charged with responsibility for the conduct of all Finance Department functions, and the development of procedures to implement this Investment Policy as approved by the MSPA Board of Commissioners.

The Finance Department is charged with responsibility for overseeing the investment and custody of all MSPA funds and securities belonging to or under the control of the MSPA and for the deposit and investment of those funds in accordance with principles of sound treasury management and with applicable laws and ordinances (a) (b) (c).

#### **Responsibilities of the Investment Manager**

Any Investment Manager acting as a fiduciary in the management of MSPA investments shall meet at least annually (or as requested) with the MSPA FD to review investment performance, strategy, and discuss any changes in the MSPA's cash needs or goals that would impact the investment portfolio. Prior to or upon engagement, and as frequently as proscribed, the Investment Manager is required to provide the following information:

## EXHIBIT B

- SEC Form ADV part 2A or equivalent regulatory document covering firm information, disciplinary information, code of ethics, and brokerage practices. (initially and *if any material changes*);
- Best Execution Analysis summary for the firm's fixed income trading – (*initially and annually*);
- Disclosure of any conflicts of interest as it relates to the MSPA and the MSPA's account, particularly in relation to fees and revenue (*initially and if any material changes*);
- Disclosure of all fees and revenue derived from the MSPA investment relationship, both direct and indirect (e.g.: revenue sharing, shareholder servicing fees, commissions, etc.) (*initially and annually*).

### **Responsibilities of the MSPA Executive Director & CEO**

The MSPA Executive Director & CEO is responsible for directing and supervising the FD. All investments made on behalf of the MSPA shall be accomplished in accordance with this Investment Policy. He or she is responsible further to keep the MSPA Board of Commissioners fully advised as to the financial condition of the MSPA.

### **Responsibilities of the MSPA's Auditing Firm**

The auditing firm of the MSPA shall have responsibilities that include, but not be limited to, the examination and analyses of the fiscal procedures of the MSPA and the examination, checking and verification of accounts and expenditures. A review of the MSPA's investment program is a part of the responsibility described above.

### **Responsibilities of the MSPA Board of Commissioners**

The MSPA Board of Commissioners shall consider and adopt a written Investment Policy. As provided in that Policy, the Board of Commissioners shall periodically review said policy.

## **Other Items**

### **Notice of Policy**

The MSPA shall send a copy of the current edition of this Investment Policy upon opening an account and annually to all institutions which are approved to handle MSPA investments. Receipt of the policy, including confirmation that it has been reviewed by persons handling the MSPA's account, shall be acknowledged in writing within thirty days.

### **Collateralization Requirements**

Uninsured time deposits with banks and savings & loans shall be collateralized in the manner prescribed by law for depositories accepting State investment funds (b).

### **Handling of MSPA-Owned Securities and CD's**

All CDs owned by the MSPA shall be held by the MSPA. The collateral for CDs purchased from banks shall be held in trust by the bank (if a safekeeping agreement has been executed) or by a third-party custodian. The collateral shall be monitored by the State of Mississippi Treasurer's Office.

### **Verification of Certificates of Deposit Collateral**

For Certificates of Deposit (CD's) more than the FDIC insurance limits, the collateral for the CD shall be an amount equal to a minimum of 105% of the deposited funds. The State of Mississippi Treasurer's Office will monitor the collateral held by the custodian of collateral pledged for state agency deposits (b).

### **Ethics & Conflicts of Interest**

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial

## **EXHIBIT B**

investment decisions. Such employees and investment officials shall disclose to the MSPA Board of Commissioners and the MSPA Executive Director & CEO any material financial interests in financial institutions that conduct business within this jurisdiction, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the MSPA's portfolio.

### **Pre-formatted Wire Transfers**

Wherever possible, the MSPA shall use pre-formatted wire transfers to restrict the transfer of funds to pre-authorized accounts only. Two authorized signatories are required when transferring funds to an account. Authorized MSPA officials are the Executive Director & CEO and the FD. In the absence of the CEO, the COO may serve as an authorized signatory. Wire transfers directly between the MSPA's depository and its custodian are permitted.

### **Investing Bond Proceeds**

Proceeds of Bonds issued by the State of Mississippi for the MSPA are not a part of this policy.

## **Review**

This Investment Policy shall be reviewed periodically by the MSPA Board of Commissioners to ensure its consistency with respect to the overall objectives of safety, liquidity, and yield. Proposed amendments to the policy shall be prepared by the Finance Department and be forwarded to the MSPA Board of Commissioners for consideration.

## **Definitions**

Unexpended funds - for the purpose of this Policy, are all MSPA funds which are available for investment at any time, excepting those minimum balances required by the MSPA's banks to compensate them for the cost of banking services.

Credit risk - the risk of loss due to the failure of the security issuer or backer

Interest Rate Risk - the risk that the market value of portfolio securities will fall due to an increase in general interest rates.

Delivery versus Payment (DVP) - simultaneous delivery of securities by the broker with an exchange of money from the custodian for the securities and having a confirmation receipt for the securities being delivered to the purchaser.

# Exhibit C

# MISSISSIPPI STATE PORT AUTHORITY AT GULFPORT

## STANDARD AGREEMENT

for [NATURE OF SERVICES]

[Contract Number]

THIS AGREEMENT, made and entered into this \_\_\_ day of \_\_\_\_, 20\_\_, at Gulfport, Mississippi, by and between the Mississippi State Port Authority at Gulfport, P.O. Box 40, Gulfport, Mississippi 39502 (the “MSPA”), and

[Name]  
[Address]  
[Address]  
Phone: [?]  
Contact Person: [?]  
Email: [?]

(the “Contractor”).

This Contract includes this Standard Agreement and all attachments and the Supplemental Conditions hereto (together, the “Agreement,” the “Contract,” or the “Contract Documents”).

The Contractor for and in consideration of the conditions, agreements, and stipulations of the MSPA hereinafter expressed, does hereby agree to furnish to the MSPA services and the obligations and responsibilities as follows:

**A. WORK TO BE PERFORMED:**

[Insert description of work to be performed] (the “Work”)

[NOTE: Ensure that Work is a defined term]

**B. COMPENSATION:**

This Agreement is subject to the fiscal and administrative provisions of the Mississippi State Port Authority and the State of Mississippi. Charges will accrue only after execution of this Agreement. Any amount of the MSPA’s obligation hereunder shall not at any time exceed the amount stated in this Agreement. Unless otherwise provided for in this Agreement, the MSPA

shall be represented by its Executive Director in all administrative matters relating to this Agreement.

The MSPA hereby agrees to pay for the services at the times, in the manner, and for the consideration, as herein expressed. All payments made under this Agreement must be approved by the MSPA Board of Commissioners. The MSPA Board of Commissioners' regularly scheduled meetings are generally held on the fourth Thursday of each month.

All invoices submitted by the Contractor to the MSPA for the Work being paid for on an actual cost basis shall be subject to audit or re-audit by the MSPA and its representatives. Books and records showing any charges thereto shall be retained and made available in Gulfport, Mississippi, for not less than three (3) years after completion of the Work and receipt of final payment for purposes of this provision.

When requesting payment for services or reimbursement of costs, the Contractor shall submit supporting documentation in sufficient detail to clearly document fees/costs incurred. Cost detail includes a detailed breakout of all costs incurred including direct labor, indirect costs, other direct costs, travel, etc. All requests for payment or reimbursement to the MSPA shall include sufficient documentation to justify reimbursement or payment to the Contractor, including invoices and proof of payment of an invoice.

The Contractor will be paid in arrears promptly on presentation of invoices, or such other data as the MSPA may herein specify, after rendition of service. All original invoices or payment applications shall be presented to the Mississippi State Port Authority, Attn: Accounts Payable, P.O. Box 40, Gulfport, MS 39502.

All fees shall be based on information provided by the Contractor's written proposal, attached and incorporated herein as Exhibit "A."

**TOTAL ONE-TIME SET UP FEE NOT TO EXCEED: [?]**

**The sum total of the services shall not exceed \$[?].**

**TOTAL AGREEMENT NOT TO EXCEED \$[?]**

**C. TIME FOR PERFORMANCE:**

Period of Performance for this Agreement shall commence on \_\_\_\_\_, 20\_\_ and expire on \_\_\_\_\_, 20\_\_ [with a renewal option of two (2) years to commence on \_\_\_\_\_, 20\_\_ to \_\_\_\_\_, 20\_\_ and \_\_\_\_\_, 20\_\_ to \_\_\_\_\_, 20\_\_ subject to annual review.]

**D. GENERAL CONDITIONS:**

The following provisions constitute a part of this Agreement:

1. Availability of Funds. It is expressly understood and agreed that the obligation of the MSPA to proceed under this Agreement is conditioned upon the appropriation of federal

and/or State funds. If the funds anticipated for the continuing fulfillment of the Contract are, at any time, not forthcoming or insufficient, whether through the failure of the federal government to provide funds, the State of Mississippi's failure to appropriate funds, the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the MSPA for any reason whatsoever, the MSPA shall have the right, upon ten (10) working days' written notice to the Contractor, to terminate this Contract without damage, penalty, cost, or expenses to the MSPA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

2. Compliance with Laws. The Contractor understands that the MSPA is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful, and the Contractor agrees during the term of the Contract to strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this Contract shall be subject to, all applicable federal, State, and local laws and regulations, as now existing and as may be hereafter amended or modified.
3. E-Verification. If applicable, the Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1, *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The Contractor agrees to maintain records of such compliance. Upon request of the State of Mississippi and after approval of the Social Security Administration or Department of Homeland Security, when required, the Contractor agrees to provide a copy of each such verification. The Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this Contract may subject the Contractor to the following:
  - A. Termination of this Contract for services and ineligibility for any State or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
  - B. The loss of any license, permit, certification, or other document granted to the Contractor by an agency, department, or governmental entity for the right to do business in Mississippi for up to one (1) year; or
  - C. Both. In the event of such termination/cancellation, the Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

4. Transparency. This Contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, *et seq.*
5. Authority to Contract. The Contractor warrants that: (a) it is a validly organized business with valid authority to enter into this Contract; (b) it is qualified to do business and is in good standing in the State of Mississippi; (c) entry into and performance under this Contract is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (d) notwithstanding any other provision of this Contract to the contrary, there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Contract.
6. Independent Contractor Status. The Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the MSPA. Nothing contained herein shall be deemed or construed by the MSPA, the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint venturers, employer and employee, or any such similar relationship between the MSPA and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the MSPA or the Contractor hereunder, creates or shall be deemed to create a relationship other than the independent contractor relationship of the MSPA and the Contractor. The Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the MSPA. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the MSPA and the MSPA shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The MSPA shall not withhold from the Contract payments to the Contractor any federal or Mississippi unemployment taxes, federal or Mississippi income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the MSPA shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the State of Mississippi for its employees.
7. Licenses and Permits. Unless otherwise stated in the Contract Documents to be the responsibility of the MSPA, the Contractor shall, at the Contractor's own cost, procure all its administrative resources, permits, and licenses and any other permits that may be required for performance of the Work herein and shall pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work. The MSPA will cooperate with the Contractor when it is feasible for the MSPA to do so in obtaining cooperation from local, county, or State governmental entities in order to facilitate the Work moving forward on time and on budget. The Contractor represents that it has obtained all necessary federal and/or State licenses to perform its services as contemplated under this Contract and that it will maintain said licenses throughout the term of this Contract.
8. Change in Scope of Work. The MSPA may order changes in the services consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by the Contractor that the scope of the Work or of the Contractor's services

has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by the MSPA and Contractor. If the Contractor believes that any particular work is not within the scope of the Work, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the MSPA in writing of this belief. If the MSPA believes that the particular work is within the scope of the Contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the services within the Contract.

9. Ownership of Documents and Work Papers. The MSPA shall own all documents, files, reports, work papers, and working documentation, electronic or otherwise, created in connection with the Work, which is the subject of this Contract, except for the Contractor's internal administrative and quality assurance files and internal correspondence. The Contractor shall deliver such documents and work papers to the MSPA upon termination or completion of this Contract. Notwithstanding the foregoing, the Contractor shall be entitled to retain a set of such work papers for its files. The Contractor shall be entitled to use such work papers only after receiving written permission from the MSPA and shall be subject to any copyright protections.
10. Record Retention and Access to Records. Provided an inspection is made during normal business hours of the Contractor, the MSPA or any duly authorized representatives, shall have unimpeded, prompt access to any of the Contractor's books, documents, papers, and records which are maintained or produced as a result of the Work for the purpose of making audits, examinations, excerpts, and transcriptions. The Contractor shall retain all records related to this Contract for three (3) years after final payment is made under this Contract and all pending matters are closed. However, if any audit, litigation, or other action arising out of or related in any way to the Work is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.
11. Right to Inspect. The State of Mississippi, acting by and through the MSPA or any other authorized subdivision of the State, may at reasonable times, inspect the place of business of the Contractor which is related to the performance of this Contract.
12. Right to Audit. The Contractor shall maintain such financial records and other records as may be prescribed by the MSPA or by applicable federal and State laws, rules, and regulations. The Contractor shall retain these records for a period of three (3) years after final payment or until they are audited by the MSPA, whichever event occurs first. These records shall be made available during the term of the Contract and the subsequent three (3) year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.
13. State Property. The Contractor will be responsible for the proper custody and care of any State-owned property furnished for the Contractor's use in connection with the

performance of this Contract. The Contractor will reimburse the State for any loss or damage, except normal wear and tear.

14. Personnel. The Contractor represents that it has, or will secure, at its own expense, all personnel required in performing the Work under this Contract. Such personnel will not be employees of, or have any contractual relationship with the MSPA. All of the services required hereunder will be performed by the Contractor under its supervision, and all personnel engaged in the Work will be fully qualified and will be authorized or permitted under State and local law to perform such services. The day-to-day supervision and control of the Contractor's employees is the sole responsibility of the Contractor.
15. Rejection and Approval of the Contractor's Personnel. The MSPA shall, throughout the term of the Contract, have the right of reasonable rejection and approval of staff assigned to the work by the Contractor. If the MSPA reasonably rejects staff, the Contractor must provide replacement staff satisfactory to the MSPA in a timely manner and at no additional cost to the MSPA.
16. Confidentiality.
  - A. *Public Records*. Notwithstanding any provision to the contrary contained herein, all parties recognize that the MSPA is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* If a public records request is made for any information provided to the MSPA pursuant to this Contract and designated by the Contractor in writing as trade secrets or other proprietary confidential information, the MSPA shall follow the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1 before disclosing such information. The MSPA shall not be liable to the Contractor for disclosure of information required by court order or required by law.
  - B. *Trade Secrets*. The parties acknowledge that Mississippi law requires that information related to the personal or professional services provided, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret or confidential commercial or financial information and that such information shall be available for examination, copying, or reproduction.
17. Copyrights. The Contractor agrees that the MSPA shall determine the disposition of the title to and the rights under any copyright by the Contractor or employees on copyrightable material first produced or composed under this Contract. Further, the Contractor hereby grants to the MSPA a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use, and dispose of, and to authorize others to do so, all copyrighted (or copyrightable) work not first produced or composed by the Contractor in the performance of this Contract but which is incorporated in the material furnished under the Contract. This grant is provided that such license shall be only to the extent the Contractor now has, or prior to the completion of full final settlements of agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

18. Debarment and Suspension. The Contractor certifies to the best of its knowledge and belief that it, its corporate officers, principal owners, managers, auditors, and others in a position of administering governmental funds:
- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
  - B. Have not, within a three (3) year period preceding this Contract, 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 or Contract under a public transaction;
  - C. Have not, within a three (3) year period preceding this Contract, been convicted of or had a civil judgment rendered against them for a 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;
  - D. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State, or local) with commission of any of these offenses enumerated in subparagraphs B. and C. of this certification; and
  - E. Has not, within a three (3) year period preceding this Contract, had one or more public transactions (federal, State, or local) terminated for cause or default.
19. Failure to Deliver. In the event of failure of the Contractor to deliver Work in accordance with the Contract terms and conditions, the MSPA, after due oral or written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the MSPA may have.
20. Force Majeure. Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party. Such acts shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fires, earthquakes, floods, or other natural disasters ("Force Majeure Events"). When such a cause arises, the Contractor shall notify the State immediately in writing of the cause of its inability to perform, how the Force Majeure event affects its performance, and the anticipated duration of the inability to perform. In the event of delays in delivery or in meeting completion dates due to Force Majeure Events, the MSPA will extend such dates for a period not to exceed the duration of the delay caused by such events, unless the State determines that termination of the Contract is in the State's best interest.

21. Anti-Assignment/Subcontracting. The Contractor acknowledges that it was selected by the MSPA to perform the services required hereunder based, in part, upon the Contractor's special skills and expertise. The Contractor shall not assign, subcontract, or otherwise transfer this Contract in whole or in part without the prior written consent of the MSPA, which the MSPA may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the MSPA of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the MSPA in addition to the total fixed price agreed upon in this Contract. Subcontracts shall be subject to the terms and conditions of this Contract and to any conditions of approval that the MSPA may deem necessary. Subject to the foregoing, this Contract shall be binding upon the respective successors and assigns of the parties.
22. Indemnification. The Contractor will indemnify, defend, save and hold harmless, protect, and exonerate the MSPA and the State of Mississippi and each entity's respective directors, officers, employees, and agents from and against all claims, demands, liabilities, suits, actions damages, losses, and any costs related thereto as a result of any and all claims proceeding (whether brought by private party or related to enforcement action), including, without limitation, court costs, investigative fees and expenses, and attorneys' fees resulting from or relating directly or indirectly out of services rendered by the Contractor, its agents, or employees, pursuant to the Contract and submitted proposal and any amendments thereto or the negligence or willful misconduct of the Contractor or its subcontractors in connection with the Work pursuant to this Contract. This indemnity obligation is intended to be, and shall be interpreted to be, a separate and independent contractual obligation from the contractual provisions addressing the requirements and placement of insurance, including, but not limited to, insurance covering the MSPA.
23. Infringement Indemnification. The Contractor warrants that any materials and deliverables provided to the MSPA under this Contract, and their use by the MSPA, will not infringe or constitute an infringement of any copyright, patent, trademark, or other proprietary right. Should any such items become the subject of an infringement claim or suit, the Contractor shall defend the infringement action and/or obtain for the customer the right to continue using such items. Should the Contractor fail to obtain for the customer the right to use such items, the Contractor shall suitably modify them to make them non-infringing or substitute equivalent software or other items at the Contractor's expense.
- The Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate, at its own expense, the MSPA, its Commissioners, officers, employees, agents and representatives, and the State of Mississippi, against and pay all costs, including discovery costs, damages (including punitive damages), and attorneys' fees that a court finally awards for infringement based on the programs and deliverables provided under this Contract.
24. Insurance. The Contractor shall maintain during the period of performance of the Contract the following liability insurance coverage, from an insurance carrier(s) licensed or holding a Certificate of Authority from the Mississippi Department of Insurance, related to the work of the Contractor and in connection with the Contract.

- A. *Workers' Compensation and Employer's Liability Insurance.* This insurance shall protect the Contractor against all claims under applicable State workers' compensation laws. The Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a workers' compensation law, but to the extent applicable could fall within the provisions of other State or Federal laws or regulations, including, by way of example and not as a limitation, claims brought under the United States Longshoremen's and Harbor Workers' Compensation Act or any other laws to which the Contractor or the Work may be subject pursuant to the Contractor's compliance obligations under Section 2 hereinabove. The liability limits shall not be less than the required statutory limits for workers' compensation and employer's liability limits in the amount of One Million and 00/100 Dollars (\$1,000,000.00). If Contractor is performing services under this Agreement and owns or charters a vessel or vessels, Contractor shall procure a Maritime Coverage Endorsement (WC 00 02 01 B), or its equivalent, to ensure that any *in rem* claims against a vessel owned or chartered by Contractor will be treated as a claim against Contractor. The Contractor shall supply the MSPA endorsements from its carriers evidencing waiver of subrogation in favor of the MSPA.
- B. *Comprehensive General and/or Marine Liability Insurance.* This insurance shall include bodily injury, property damage, contractual, and other standard coverage contained in comprehensive general liability insurance, in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) aggregate. The Contractor shall, to the extent applicable, also be protected against maritime claims and damages of a similar nature, which could fall within the provisions of other State or Federal laws or regulations, including, by way of example and not as a limitation, claims brought under the United States Longshoremen's and Harbor Workers' Compensation Act or any other laws to which the Contractor or the Work may be subject pursuant to the Contractor's compliance obligations under Section 2 hereinabove. If Contractor uses an owned or chartered vessel or vessels to perform the Work, Contractor shall procure a Protection and Indemnity Insurance Policy (P&I) in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. The P&I policy shall include coverage for the vessel's or vessels' captain and crew. If Contractor will be performing the Work in or around navigable water and working on or from a vessel or vessels that Contractor does not own or has not chartered, Contractor shall procure a Maritime Employers Liability Policy in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and One Million and 00/100 Dollars (\$1,000,000.00) aggregate.
- C. *Auto Liability Insurance.* This insurance shall be in the amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) Combined Single Limit to protect it from any and all claims arising from the use of the following: (1) the Contractor's own automobiles and trucks; and (2) hired and non-owned automobiles and trucks. The aforementioned is to cover use of automobiles and trucks on and off the MSPA's premises.

- D. *Errors and Omissions/Professional Liability Coverage.* The MSPA may, in its discretion, require Contractor to procure and maintain Errors and Omissions/Professional Liability Coverage. This insurance shall be in the amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.
- E. *Pollution Liability Coverage.* The MSPA may, in its discretion, require Contractor, if Contractor is not performing Work from a vessel or vessels and deemed by the MSPA to have pollution exposure, to procure and maintain a Contractor's Pollution Liability Policy in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and One Million and 00/100 Dollars (\$1,000,000.00) aggregate. In addition, the MSPA may require Contractor, if performing Work from an owned or chartered vessel or vessels and deemed by the MSPA to have pollution exposure, to procure and maintain a Vessel Pollution Policy in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and One Million and 00/100 Dollars (\$1,000,000.00) aggregate.

Except for the Workers' Compensation Policy required by this Section, the MSPA, its Commissioners, officers, employees, agents, and representatives and the State of Mississippi (the "Interested Parties") shall be named as additional insureds on such policies. The Contractor shall provide that the insureds thereon waive subrogation against the State of Mississippi and the said agencies and subdivisions thereof. Endorsements for all policies shall be provided to the MSPA stating that the insureds thereon waive subrogation against the State of Mississippi and the said agencies and subdivisions thereof. The Contractor's respective policies shall provide primary coverage before any applicable policy otherwise covering the MSPA, and any insurance covering the MSPA shall be excess coverage over the Contractor's coverage. Endorsements so stating shall be provided to the MSPA by the Contractor. The policies required by this Section shall also provide for all Interested Parties to be provided with a minimum thirty (30) days' written notice prior to a cancellation or modification of each respective policy. While the Contractor shall provide the MSPA with endorsements as set forth in this paragraph, the failure to do so, or the failure of the endorsements or insurance provided to conform to the Contract, does not constitute waiver or estoppel as to the MSPA of their respective legal and equitable rights, including but not limited to the right to enforce the terms of the Contract. These contractual insurance provisions are intended to be, and shall be interpreted to be, separate and independent contractual obligations from the contractual provisions addressing the indemnity of the MSPA by the Contractor. Upon execution of the Contract, the Contractor shall promptly furnish the MSPA with certificates of insurance showing the Contractor's compliance with the insurance provisions of this Section.

25. No Limitation of Liability. Nothing in this Contract shall be interpreted as excluding or limiting any tort liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor or for damages incurred through the negligent performance of duties by the Contractor or the delivery of products that are defective due to negligent construction.
26. Interest of the Contractor and the Contractor's Employees. The Contractor covenants that neither it nor its employees presently have any interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of

services required to be performed under this Contract. The Contractor further covenants that in the performance of this Contract, no person having such interest will be employed.

27. Recovery of Money. Whenever, under the Contract, any sum of money shall be recoverable from or payable by the Contractor to the MSPA, the same amount may be deducted from any sum due to the Contractor under the Contract or under any other contract between the Contractor and the MSPA. The rights of the MSPA are in addition and without prejudice to any other right the MSPA may have to claim the amount of any loss or damage suffered by the MSPA on account of the acts or omissions of the Contractor.

28. Termination for Convenience Clause.

A. *Termination.* The MSPA may, when the interests of the MSPA so require, terminate this Contract in whole or in part, for the convenience of the MSPA. The MSPA shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective.

B. *The Contractor's Obligations.* The Contractor shall incur no further obligations in connection with the terminated Work, and on the date set in the notice of termination the Contractor will stop Work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated Work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated Work. The MSPA may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the MSPA. The Contractor must still complete the Work not terminated by the notice of termination and may incur obligations as are necessary to do so. The Contractor shall be entitled to compensation for services performed up to the date of termination, and authorized and accepted by the MSPA.

29. Termination for Default.

A. *Default.* If the Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract or any extension thereof or otherwise fails to timely satisfy the Contract provisions or commits any other substantial breach of this Contract, the MSPA may notify the Contractor in writing of the delay or nonperformance. If delay or nonperformance is not cured in ten (10) days or any longer time specified in writing by the MSPA, such officer may terminate the Contractor's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the MSPA may procure similar services in a manner and upon terms deemed appropriate by the procurement officer. The Contractor shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- B. *The Contractor's Duties.* Notwithstanding termination of the Contract and subject to any directions from the procurement officer, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the State has an interest.
- C. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the Contract price. The State may withhold from amounts due the Contractor such sums as the MSPA deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar services.
- D. *Excuse for Nonperformance or Delayed Performance.* The Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the MSPA within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.
- E. *Erroneous Termination for Default.* If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, the MSPA determines for any reason that the Contract was not in default under the provisions of this clause or that the delay was excusable under the provisions of subparagraph D (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
- F. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.
30. Termination upon Bankruptcy. This Contract may be terminated in whole or in part by the MSPA upon written notice to the Contractor, if the Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by the Contractor of an assignment for the benefit of its creditors. In the event of such termination, the Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this Contract, but in no case shall said compensation exceed the total Contract price.
31. Third-Party Action Notification. The Contractor shall give the MSPA prompt notice in writing of any action or suit filed, and prompt notice of any claim against the Contractor by any entity that may result in litigation related in any way to this Contract.
32. Disputes. Any dispute concerning a question of fact under this Agreement, which is not disposed of by the mutual agreement of the parties, shall be decided by the Executive

Director of the MSPA or his or her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute breach under the terms of this Contract. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

33. Attorneys' Fees. Subject to other terms and conditions of this Contract, in the event the Contractor defaults in any obligations under this Contract, the Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees and costs for discovery, court costs, and attorneys' fees) incurred by the State in enforcing this Contract or otherwise reasonably related thereto. The Contractor agrees that under no circumstances shall the MSPA be obligated to pay any attorneys' fees or costs of legal action to the Contractor.
34. Waiver. No delay or omission by either party to this Contract in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, or impair any other right, power, or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this Contract shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this Contract will void, waive, or change any other term or condition of this Contract. No waiver by one party to this Contract of a default by the other party will imply, be construed as, or require waiver of future or other defaults.
35. Severability. If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Contract that can be given effect without the invalid or unenforceable provision, and to this end, the provisions hereof are severable. In such event, the parties shall amend the Contract as necessary to reflect the original intent of the parties, and to bring any invalid or unenforceable provisions in compliance with applicable law.
36. Applicable Law. The Contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of law's provisions and, any litigation with respect thereto shall be brought in the courts of the State.
37. Time is of the Essence. The Contractor shall commence the Work as specified in this Agreement and shall complete the Work within the time specified in the Agreement. The Contractor shall conduct its operations as to cause the least possible obstruction and inconvenience to the MSPA.
38. Notices. All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor:

For the MSPA: Mississippi State Port Authority  
Attn: Executive Director & CEO  
2510 14<sup>th</sup> Street, Suite 1450  
Gulfport, MS 39501

39. Integrated Agreement/Merger. This Contract, including all Contract Documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, irrespective of whether written or oral. This Contract may be altered, amended, or modified only by a written document executed by the MSPA and the Contractor. The Contractor acknowledges that it has thoroughly read all Contract Documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this Contract shall not be construed or interpreted in favor of or against the MSPA or the Contractor on the basis of draftsmanship or preparation hereof.
40. Modification or Renegotiation. The parties agree to renegotiate the Contract if federal and/or State revisions of any applicable laws or regulations, including the availability of funding, make changes in this Contract necessary, which determination of necessity solely rests with the MSPA.
41. Oral Statements. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract.
42. Headings. The headings in this Contract are for reference only and shall not affect the interpretation of this Contract.

**END OF GENERAL CONDITIONS**

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This Agreement has been executed by and on behalf of the parties hereto, on the date first above written:

Contractor:

AGJ Systems & Networks, Inc.

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

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

Mississippi State Port Authority at Gulfport

\_\_\_\_\_  
James C. Simpson, Jr., Board Secretary

\_\_\_\_\_  
E.J. Roberts, Board President

REFERENCE ONLY