

THE FOLLOWING RESOLUTION WAS INTRODUCED BY COUNCILMEMBER DANIELSON AND SECONDED FOR INTRODUCTION BY COUNCILMEMBER

_____.

RESOLUTION NO. 22 - 35

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANDEVILLE ACCEPTING THE BID FOR THE HURRICANE IDA FENCE REPLACEMENT PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE APPARENT LOWEST BIDDER AND PROVIDING FOR OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, as a result of Hurricane Ida’s strong winds, the City incurred damages to its chain link, wooden and ornamental fences, which necessitate repair and qualify as permanent work under the FEMA Public Assistance Program;

WHEREAS, the City advertised for bids for the Hurricane Ida Fence Replacement Project; and

WHEREAS, the City has received three bids for the Hurricane Ida Fence Replacement Project, and

WHEREAS, Richard C. Lambert Consultants, LLC has reviewed the bids on the above referenced project. The lowest proposal was provided by Southern Exteriors Fence Company License #63175. Based upon the policies and authority under which the City operates, Richard C. Lambert Consultants, LLC recommends awarding the contract to Southern Exteriors Fence Company; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Mandeville in regular session assembled on the _____th day of September 2022 acting pursuant to the recommendations of Richard C. Lambert Consultants, LLC, that the proposal in the amount of \$248,730.00 be accepted from Southern Exteriors Fence Company.

BE IT FURTHER RESOLVED, that the City Council of the City of Mandeville hereby authorizes the Mayor to execute a contract between the City of Mandeville and Southern Exteriors Fence Company, License #63175, attached hereto and made a part of this resolution hereto.

With the above resolution having been properly introduced and duly seconded, the vote was as follows:

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

and the resolution was declared adopted this _____ day of _____, 2022.

Kristine Scherer

Clerk of Council

Rick Danielson

Council Chairman

FENCE REPLACEMENT CONTRACT

BETWEEN

THE CITY OF MANDEVILLE

AND

SOUTHERN EXTERIORS FENCE COMPANY

THIS AGREEMENT is entered into by and between the City of Mandeville (herein after referred to as “City”) and SOUTHERN EXTERIORS FENCE COMPANY, represented by Rance Necaie, its president (hereinafter referred to as the “Contractor”). The City and Contractor may be collectively referred to as the “Parties”. This Agreement is effective as of the date of execution by the City (“Effective date”).

RECITALS

WHEREAS that on or about September 9, 2021, the City issued an Invitation to Bid for a contractor to provide **FENCE REPLACEMENT** to multiple fencing projects located within the City, which were damaged as a result of Hurricane Ida in 2021.

WHEREAS, as a result of Hurricane Ida’s strong winds, the City incurred damages to its chain link, wooden and ornamental fences, which necessitate repair and qualify as permanent work under the FEMA Public Assistance Program;

WHEREAS, the City prepared an Invitation to Bid in response to the significant damage, and the Contractor submitted a formal bid to provide those services stated in the Invitation to Bid. The City accepted the Contractor’s bid.

NOW THEREFORE, the City and the Contractor, for good and valuable consideration, agree as follows:

ARTICLE I – OBLIGATIONS OF THE CONTRACTOR

The purpose of this contract is to provide post-disaster repair and replacement to fences located on City property that were damaged as a result of Hurricane Ida. The Contractor agrees to provide all work per specifications included in its public bid, dated August 3, 2022 in response to the Invitation to Bid issued by the City, the contents of which are specifically included herein as if copied *in extenso*. Generally, the scope of work includes two types of fencing: chain link and wooden. The scope of work is as follows:

- 1.1 Chain link fencing: Contractor shall construct fences and gates in accordance with the specifications of the Invitation to Bid and in conformity with lines and grades shown on

the scope of work in the Invitation to Bid or established by the engineer.

- 1.2 Wooden fencing: Contractor shall construct fences and gates in accordance with the specifications of the Invitation to Bid and in conformity with lines and grades shown on the scope of work in the Invitation to Bid or established by the engineer.
- 1.3 Fencing shall be constructed in the following locations in accordance with the plans and specifications included in the Invitation to Bid, which is attached hereto as Exhibit A.

ARTICLE II – OBLIGATIONS OF THE CITY

The City shall:

- 2.1 Appoint a City Designated Agent (CDA) who shall serve as the primary point of contact (POC) for the Contractor for all issues that shall arise during the term of this contract and who shall provide direction to Contractor. For this contract, the CDA shall be the Director of Public Works.
- 2.2 The CDA shall respond to all communication by Contractor and Contractor's team members in a timely manner.
- 2.3 Provide Contractor personnel with access to any required records relating to FEMA grants and access to the City personnel who may have knowledge necessary for Contractor personnel to address Contractor's statement of services.
- 2.4 The City personnel shall fully cooperate with Contractor in connection with Contractor's statement of work in this Agreement.
- 2.5 Not authorize its officers or employees to request or instruct Contractor to perform any work beyond the statement of services or duration stated in this Agreement or to offer or promise the Contractor additional funding in excess of the maximum amount payable established in this Agreement.

ARTICLE III – TERMS OF THE AGREEMENT

- 3.1 This Agreement shall commence on the ____ day of September 2022 and shall terminate on the 31st day of August 2023 (one year).
- 3.2 This Agreement shall not exceed \$248,730.00 as calculated in Contractor's Bid tabulation to the City.

ARTICLE IV – PAYMENTS TO CONTRACTOR

- 4.1 Payments to Contractor: For services performed, the City shall make payment to Contractor no later than 60 days from the date Contractor submits invoice covering the previous month's activities. However, during a declared emergency, payment shall be made no later

than 60 days from the date the Contractor submits invoice covering previous month's activities.

- 4.2 Taxes: Contractor hereby agrees that the responsibility for payment of taxes from the funds received from this Agreement shall be the Contractor's obligation under federal tax identification number 47-4815995.

ARTICLE V – INSURANCE

- 5.1 The Contractor shall secure and maintain at its expense such insurance that will protect it and the City from claims under the Workers' Compensation Acts and from claims for bodily injury, death or property damage which may arise from the performance of services under this agreement. All certificates of insurance shall be furnished to the City and shall provide that insurance shall not be canceled or substantively changed without thirty (30) days prior notice of cancellation given to the City, in writing, on all of the required coverage provided to the City. All policies and notices should name the Contractor and the City. The Contractor shall make its policies available for review and examination by the City as may be reasonably requested.
- 5.2 All policies must provide for and certificates of insurance must contain the following:
 - 5.2.1 Waiver of Subrogation: The Contractor's insurers will have no right of recovery or subrogation against the City, it being the intention of the parties that all insurance policy(ies) so affected shall protect both parties and be the primary coverage for any and all losses covered by the below described insurance. Policy endorsements required for all coverages.
 - 5.2.2 Additional Insured: The City, its Officers, Agents, Employees and Volunteers shall be named as additional named insured with respect to general liability, automobile liability, excess liability, pollution/environmental liability coverage, and marine liability. Policy endorsements required.
 - 5.2.3 Hold Harmless: Contractor's liability insurers shall evidence their cognizance of the Hold Harmless and Indemnification being granted in favor of the City by referencing same on the face of the Certificate(s) of Insurance issued.
 - 5.2.4 Payment of Premiums: The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums or for assessments under any form of policy.
 - 5.2.5 Deductibles: Any and all deductibles in the described insurance policies shall be assumed by and be at the sole risk of the Contractor and shall be indicated on the Certificate of Insurance. Deductibles and/or self-insured retentions exceeding \$100,000 must be approved by the City's Finance Director. The City may require Contractor to produce evidence of verifiable financial ability to satisfy its

deductibles and/or self-insured retentions; however, the City assumes no liability or obligation as a result of its examination, acceptance, or rejection of said information presented. The City shall have the sole discretion to accept or reject deductibles and/or self-insured retentions exceeding \$100,000 as it deems appropriate.

5.2.6 **Project Reference:** The project(s) and location(s) shall be referenced in the comment or description of operations section of the Certificate of Insurance.

5.3 The Contractor shall provide at its own expense, proof of the following insurance coverage required by the Contract to the City by insurance companies authorized to do business in the State of Louisiana. Insurance is to be placed with insurers with an A.M. Best rating of no less than A-, Category VII.

5.3.1 Commercial General Liability insurance with a Combined Single Limit for bodily injury and property damage of at least \$1,000,000 per Occurrence with a General Aggregate limit of at least \$2,000,000 per project. The insurance shall provide for and the certificate(s) of insurance shall indicate the following coverages:

5.3.1.1 Premises - operations;

5.3.1.2 Broad form contractual liability;

5.3.1.3 Products and completed operations;

5.3.1.4 Personal Injury;

5.3.1.5 Broad form property damage;

5.3.1.6 Explosion, collapse and underground coverage.

5.3.2 Business Automobile Liability insurance with a minimum Combined Single Limit of \$1,000,000 per Occurrence for bodily injury and property damage. This insurance shall provide coverage for the following:

5.3.2.1 Any automobiles; or

5.3.2.2 Owned automobiles; and

5.3.2.3 Hired automobiles;

5.3.2.4 Non-owned automobiles;

5.3.2.5 Uninsured motorist.

5.3.2.6 MCS-90 and CA9948 Endorsements Required

5.3.3 Workers' Compensation/Employers Liability Insurance: workers compensation as statutorily required; employers liability coverage shall be a minimum of \$1,000,000 each accident, \$1,000,000 each disease, \$1,000,000 disease policy aggregate and when water activities are expected to be performed in connection with this project, coverage shall include USL&H, Jones Act, and/or Maritime Employers Liability. *Coverage for owners, officers and/or partners in any way engaged in the project shall be included in the policy and a statement of such shall be made by the insuring producer on the face of the certificate.*

5.3.4 Excess/Umbrella Liability shall be furnished by Contractor with limits of at least

equal to \$3,000,000 per occurrence on a follow form basis, for all liability coverages set forth above except for the OPL/OCP. *(For example: if the General Liability is \$1,000,000 per occurrence, then the excess policy should be at least \$2,000,000 per occurrence thereby providing a combined per occurrence limit of \$3,000,000.)*

5.3.5 Pollution and Environmental Liability insurance in the minimum amount of \$1,000,000 per occurrence, \$2,000,000 including full contractual liability and third party claims for bodily injury and/or property damage, for all such hazardous waste, pollutants and/or environmental exposures that may be affected by this project stemming from pollution/environmental incidents as a result of Contractor's operations.

If coverage is provided on a claims-made basis, coverage will at least be retroactive to the earlier of the date of this Contract or the commencement of Contractor services in relation to the work. And the policy will offer an extended discovery clause of at least three years. If written either on an occurrence or claims made basis, this coverage will be maintained through the renewal of this insurance to cover a loss arising out of the completed operations of the insured for a period of at least 2 years after work is accepted as complete by the property owner of this contract is terminated. Evidence of this coverage will not be required unless both of the following are met:

- (a) Contractor receives Notice to Proceed to perform services under this contract; and
- (b) it has been identified that services performed under this contract will include such exposures.

5.3.6 Owners Protective Liability (OPL) (formerly Owners and Contractors Protective Liability (OCP) Insurance) shall be furnished by the Contractor naming City as the Named Insured and shall provide coverage in the minimum amount of \$1,000,000 combined single limit (CSL) each occurrence \$2,000,000 aggregate for projects less than \$5,000,000; limits for any project valued over \$5,000,000 shall be set by the Finance Dept. The policy limit is subject to be increased when the total value of the contract increases. The policy and all endorsements shall be addressed to City of Mandeville, 3101 E. Causeway Approach, Mandeville, LA 70448.

5.4 All policies of insurance shall meet the requirements of the City prior to the commencing of any work. The City has the right, but not the duty, to approve all insurance policies prior to commencing of any work. If at any time, it becomes known that any of the said policies shall be or becomes unsatisfactory to the City as to form or substance or if a company issuing any such policy shall be or become unsatisfactory to the City, the Contractor shall promptly obtain a new policy, timely submit same to the City for approval and submit a certificate thereof as provided above. The City agrees to not unreasonably withhold approval of any insurance carrier selected by Contractor. In the event that the City cannot agree or otherwise authorize said carrier, Contractor shall have the option of selecting and submitting new insurance carrier within thirty (30) days of said notice by the City. In the event that the second submission is insufficient or is not approved, then the City shall have the unilateral opportunity to thereafter select a responsive and responsible insurance carrier all at the cost of Contractor and thereafter deduct from Contractor's fee the cost of such insurance.

- 5.5 Upon failure of Contractor to furnish, deliver and/or maintain such insurance as above provided, the contract, at the election of the City, may be forthwith declared suspended, discontinued or terminated. Failure of the Contractor to maintain insurance shall not relieve the Contractor from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligation of the Contractor concerning indemnification.
- 5.6 Contractor shall maintain a current copy of all annual insurance policies and provide same to City on an annual basis or as may be reasonably requested. Provider further shall ensure that all insurance policies are maintained in full force and effect throughout the duration of the Project and shall provide the City with annual renewal certificates of insurance evidencing continued coverage, without any prompting from the City.
- 5.7 It shall be the responsibility of Contractor to require that these insurance requirements are met by all sub-Contractors performing work for and on behalf of the Contractor. Contractor shall further ensure City is named as additional insured on all insurance policies provided by said Contractor and/or sub-Contractor throughout the duration of the project.
- 5.8 Certificates of Insurance (form ACORD 25 (2014/1) or newer) shall be issued as follows:
CERTIFICATE HOLDER:

City of Mandeville, Its Officers, Agents, Employees and Volunteers
3101 E. Causeway Approach
Mandeville, LA 70448
Project/Contract Name and/or Number

Certificates may be sent via email to: xxxxxx@cityofmandeville.com

***NOTICE: City reserves the right to remove, replace, make additions to and/or modify any and all of the insurance requirements at any time.**

ARTICLE VI – FEDERALLY REQUIRED PROVISIONS

Pursuant to 2 CFR 200.36 and 2 CFR Part 200 Appendix II, all contractors are required to comply with the following provisions:

- 6.1 In the event the City determines that Contractor is in breach of this Agreement, the City and Contractor shall take the following actions:
- a. Notify Contractor in writing that Contractor is in breach of this Agreement; and
 - b. Provide Contractor with detailed, specific reasons of the basis in which the City is determined to be in breach of the Agreement.
 - c. Should Contractor disagree with the finding by the City, Contractor has 10 calendar days to file an opposition to the City's determination of a breach, providing a specific answer to each of the City's allegations. Said answer should include facts, the

application of law, regulations and FEMA policy and supporting evidence such as documents, photographs and statements from witnesses.

- d. The matter shall be heard by a three-person panel appointed by the Mayor of the City and the rules of arbitration shall apply to the hearing. If the matter entails technical issues, i.e. construction, the Mayor shall ensure that the individuals appointed to the panel have the proper skill set to understand the issues and provide an unbiased opinion.
 - e. If the opinion of the panel is not in favor of the Contractor, the Contractor has 30 days to abandon the projects and will be due all amounts for which the Contractor earned, less any damages claimed by the City for the breach. In the event the Contractor does not appeal to the Mayor, the 30-day time period applies from the date the Contractor received the Notice of Breach.
- 6.1.1 The above procedure does not interfere or modify in any way, the right of either the Contractor or the City to seek remedy in the 22nd Judicial District for St. Tammany Parish regarding the alleged actions by the Contractor which resulted in the Notification of the Breach or by the Contractor for an improper finding of breach by the the City.
 - 6.1.2 The above procedure does not limit the Parties to settling any such disagreement in an amicable fashion to include terminating the Agreement for convenience.
- 6.2 The Parties may terminate the Agreement for Cause.
- 6.2.1 The City may terminate this Agreement for cause once the Contractor has been found to be in breach of this Agreement in accordance with the procedures stated under Section 6.1.
 - 6.2.2 Contractor may terminate this Agreement after giving the City notice that it is in violation of its obligations as outlined in Article II of this Agreement and the City fails to remedy the matter within 30 days of notification.
 - 6.2.3 Either party may exercise any right which the laws of Louisiana provide to it if terminated for cause.
 - 6.2.4 The proper jurisdiction for any such action is the 22nd Judicial District Court for St. Tammany Parish.
- 6.3 This Agreement may be terminated by the City for the convenience of the City upon 30 days written notice to Contractor unless Contractor had engaged in illegal or unethical behavior in which case the City may terminate the Agreement immediately. Contractor shall be paid for all work performed until termination date.
- 6.4 Contractor must comply with the Equal Employment Opportunity Act
During the performance of this Agreement, the contractor agrees as follows:

- 6.4.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- 6.4.2 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- 6.4.3 The Contractor will not discharge, or in any other manner discriminate, against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- 6.4.4 The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 6.4.5 The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- 6.4.6 The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- 6.4.7 In the event of the contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 6.4.8 The Contractor will include the portion of the sentence immediately preceding paragraph 6.4.1 and the provisions of paragraphs 6.4.1 through 6.4.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- 6.4.9 The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.
- 6.4.9.1 The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
- 6.4.9.2 The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as

may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

6.5 Contractor must comply with the Contract Work Hours and Safety Standards Act.

- 6.5.1 No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 6.5.2 In the event of any violation of the clause set forth in Section 6.5.1 of this Agreement, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- 6.5.3 Withholding for unpaid wages and liquidated damages. FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- 6.5.4 The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in Section 6.5.1 through 6.5.4 of this Agreement and also a clause requiring the

subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Section 6.5.

- 6.6 The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
 - 6.6.1 The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - 6.6.2 The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
- 6.7 The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
 - 6.7.1 The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - 6.7.2 The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
- 6.8 This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - 6.8.1 The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - 6.8.2 This certification is a material representation of fact relied upon by the City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - 6.8.3 The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- 6.9 Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
- 6.10 Contractor is required to sign the Byrd Anti-Lobbying Amendment Certification provided herein.

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, entitled "Disclosure Form to Report Lobbying" in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

6.11 In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired for the following:

- (a) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (b) Meeting contract performance requirements; or
- (c) At a reasonable price.

6.11.1 Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

6.11.2 The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

6.12 The Contractor is prohibited from contracting for covered telecommunications equipment or services as follows:

(a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) *Prohibitions.*

- (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending

grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

- (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Exceptions.*

- (1) This clause does not prohibit contractors from providing—
 - (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (2) By necessary implication and regulation, the prohibitions also do not apply to:
 - (i) Covered telecommunications equipment or services that:
 - i. Are *not used* as a substantial or essential component of any system; *and*
 - ii. Are *not used* as critical technology of any system.
 - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) *Reporting requirement.*

- (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
 - (i) Within one business day from the date of such identification or notification:
The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and

Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

- (e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

- 6.13 As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

- 6.14 The following access to records requirements apply to this Contract:
- (1) The Contractor agrees to provide the City, GOHSEP, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 - (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - (3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- 6.15 The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

- 6.16 This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, policy and executive orders as it relates to any presidentially declared event.
- 6.17 The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the Contract.
- 6.18 The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.
- 6.18.1 Contractor shall comply with all notices of awarding agency requirements and regulations pertaining to reporting.
- 6.18.2 Contractor shall comply with all awarding agency requirements and regulations pertaining to copyrights and rights in data.
- 6.18.3 Contractor shall retain all required records for a period of at least three years after receipt of final payment by the City.
- 6.19 Contraction shall take all affirmative steps to contract with small and minority businesses, women's business enterprises, and labor surplus area firms when possible. These steps are also required for the hiring of any subcontractors under this contract.
- 6.19.1 Affirmative steps must include:
- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 6.20 The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall

include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

ARTICLE VII – ADDITIONAL CONTRACT PROVISIONS

In addition to the contract provisions required by FEMA as outlined in Article VI, the following provisions are made part of this Agreement.

7.1 The following access to records requirements apply to this Agreement:

7.1.1 In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

7.2 The cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. Changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. These changes must be made in compliance with federal, state and local law, regulations and policy.

ARTICLE VIII ALLOCATION OF RISK

8.1 The Proposer shall hold forever harmless the City, its elected officials, agencies, boards and commissions, employees, representatives, and its insurers, from any and all claims, damages, losses, demands, expenses, fines, legal fees, and liability as a result of the actions or inactions by the Proposer, its employees, representatives, and sub-contractors in the performance of any and all work performed under a contract awarded under this RFP and additionally from any claims, damages, losses, demands, expense, fines, legal fees, and liability that may result from any compliance or non-compliance imposed by any regulatory authority. Payment to contractor shall be held for each incident wherein a damage claim has been received or damage has been confirmed by the City until such time that the claim has been settled.

8.2 Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events in performing their respective duties under the contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless The City from suits, actions,

damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or subcontractors in the performance of the contract, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of The City. A hold harmless agreement shall be part of the contract awarded through this RFP.

Contractor will indemnify, defend and hold The City harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against The City in any action for infringement of a United States Letter Patent with respect to the Products, Materials, or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that The City shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, The City may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as The City shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: (i) City's unauthorized modification or alteration of a Product, Material, or Service; (ii) City's use of the Product, Material, or Service in combination with other products, materials, or services not furnished by Contractor; (iii) City's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as The City's exclusive remedy to take action in the following order of precedence: (i) to procure for The City the right to continue using such item(s) or part(s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to The City up to the dollar amount of the Contract.

The City may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against the City.

ARTICLE IX - OTHER TERMS AND CONDITIONS

- 9.1 The continuation of this Agreement is contingent upon the appropriation of funds by the City to fulfill the requirements of the Agreement. If the City fails to appropriate sufficient monies to provide for the continuation of this or any other related Agreement, or if such

appropriation is reduced by the veto of the Mayor by any means provided in the appropriations Ordinance to prevent the total appropriation of the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the Agreement, the Agreement shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

- 9.1.1 Contractor acknowledges that the City is a governmental entity, and the Agreement's validity is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are unavailable and not appropriated for the performance of the City's obligations under this Agreement, then this Agreement shall automatically expire without penalty to the City thirty (30) days after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that the City shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only if necessitated by the fiscal needs of the City which affects generally its governmental operations.
- 9.1.2 In the event of a change in the City's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects the City's authority to continue its obligations under this Agreement, then this Agreement shall automatically terminate without penalty to the City upon written notice to Contractor of such limitation or change in the City's legal authority.
- 9.2 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue for any legal action brought by either party with regard to this Agreement shall be in the Twenty-Second Judicial District Court, Parish of St. Tammany, State of Louisiana.
- 9.3 The Contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contractor and assigned personnel in the performance of this Agreement. The Contractor agrees to immediately notify the City of potential violations of the Code of Governmental Ethics arise at any time during the term of this Agreement.
- 9.4 If any term or condition of this Agreement or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.
- 9.5 This Agreement, together with the RFP and any addenda issued thereto by the City, the proposal submitted by the Contractor in response to the RFP, and any exhibits specifically incorporated herein by reference, constitute the entire agreement between the parties with respect to the subject matter.

- 9.6 In the event of any inconsistent or incompatible provisions, this signed agreement (excluding the RFP and Contractor's proposal) shall take precedence, followed by the provisions of the RFP, and then by the terms of the Contractor's proposal.
- 9.7 All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 9.8 Non-enforcement of any provision of this Agreement by the City shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- 9.9 The City and Contractor each is hereby bound and the partners, successors, executors, administrators and legal representatives of the City and Contractor are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- 9.9.1 Neither the City nor Contractor may assign, sublet or transfer any rights under or interest (including, but without limitation, monies that may become due or monies that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- 9.9.2 Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by the City or Contractor to any the City, consultant, sub-consultant, supplier, other individual or entity, or to any surety for or employee of any of them unless expressly provided otherwise in this Agreement.
- 9.9.3 All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the City and Contractor and not for the benefit of any other party.
- 9.10 Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page, and hand delivered personally, or by registered or certified mail, postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

(Signature Page to Follow)

THUS DONE AND SIGNED AT Mandeville, Louisiana on this _____ day of _____
2022, and IN WITNESS WHEREOF, the parties have executed this Agreement.

WITNESSES SIGNATURES:

CITY REPRESENTATIVE SIGNATURE:

By: _____

Clay Madden
Title: Mayor
City of Mandeville
3101 East Causeway Approach
Mandeville, LA 70448
(985) 626- 3144

THUS DONE AND SIGNED AT _____ Louisiana on this _____ day of
_____, 2022, and IN WITNESS WHEREOF, the parties have executed this Agreement.

WITNESSES'S SIGNATURES:

CONTRACTOR SIGNATURE:

By: _____

Rance Necaise

Title: President
Southern Exteriors Fence Co.
31023 Crane Creek Rd.
Perkinston, MS 39470

