

## JANITORIAL SERVICES AGREEMENT

**THIS AGREEMENT** (the “Agreement”) is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2022 (the “Effective Date”), by and between, on the one hand, **The City of Pascagoula, Mississippi** (the “City”), and, on the other hand, **Wheeler’s Janitorial** (the “Provider”). The City and Provider may be severally referred to as a “Party” or collectively referred to as the “Parties.”

### WITNESSETH:

**WHEREAS**, the City desires to contract with an entity to provide janitorial services at certain City-owned properties; and

**WHEREAS**, Wheeler’s Janitorial has submitted a proposal to provide janitorial services at those City-owned properties; and

**WHEREAS**, upon receipt and review of the proposal submitted by Wheeler’s Janitorial, the City, in its sole and absolute discretion, has determined that based on the criteria stated in its Request for Proposals, Provider’s proposal best fulfills the requirements; and

**WHEREAS**, it is appropriate that the following Agreement be entered into for the provision at janitorial services at certain City-owned properties.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby mutually enter and agree to this Agreement, each for itself and its successors and assigns, as follows:

### **Section 1. Janitorial Services.**

1.1. The Provider hereby agrees to janitorial services at the following locations:

- a. City Hall, 603 Watts Avenue, Pascagoula, Mississippi
- b. Utility Office, 622 Delmas Avenue, Pascagoula, Mississippi

1.2. Provider shall provide janitorial services at the locations identified in Section 1.1. on a weekly basis. The janitorial services provided shall include: (i) sweeping, mopping, and vacuuming all flooring; (ii) cleaning all bathrooms; and (iii) change all trash bags.

**Section 2. Term.** The term of this Agreement (the “Term”) will begin on the Effective Date and will remain in full force effect through November 30, 2023 (the “Initial Period”), subject to earlier termination as provided for below. At the

conclusion of the Initial Period, this Agreement may be renewed with the written agreement of both Parties for successive one (1) year terms, ending on November 30, each year. Notwithstanding the foregoing, either party may terminate this Agreement at any time upon thirty (30) days written notice to the other party.

**Section 3. Janitorial Services Fee.** In exchange for the provision of the janitorial services, the City shall pay to the Provider a monthly fee of \$1,250.00.

**Section 4. Termination.**

4.1. Either Party shall have the right to immediately terminate this Agreement, without penalty or prejudice to any other rights and remedies it may have, if:

- a. The other Party fails to perform any material provision of this Agreement and the failure is not corrected within thirty (30) days after the other Party gives the defaulting Party written notice of the breach;
- b. The other Party (i) becomes insolvent, is unable to pay its debts as they mature, or is the subject of a petition in bankruptcy, whether voluntary or involuntary, or of any other proceedings under bankruptcy, insolvency, or similar laws; (ii) is named in, or its property is subject to, a suit for appointment of a receiver; or (iii) is liquidated or dissolved, whether through court proceedings or administratively; or
- c. The other Party suspends, discontinues, or materially alters its business operations.

4.2. This Agreement may be terminated at any time, including during the Initial Period, without penalties or prejudice, by mutual agreement of both Parties in writing.

**Section 5. Remedies Upon Default.** Termination by either Party of this Agreement shall not limit or otherwise effect the remedies of the non-defaulting or non-breaching Party against the defaulting or breaching Party. In the event that either Party is in material default under any of the terms or conditions of this Agreement or has materially breached any of its representations or warranties in this Agreement, the non-defaulting or non-breaching Party shall be entitled to pursue, in addition, to any remedies specifically provided herein, all further remedies then available at law or in equity. In the event that a court of competent jurisdiction finds that Provider is in material default under any of the terms or conditions of this Agreement or has materially breached any of its representations or warranties in this Agreement, the City shall be entitled to recover from Provider all attorneys' fees, expenses, and costs incurred by the City in obtaining such a finding.

**Section 6. Binding Successor Doctrine.** As a political subdivision of the State of Mississippi, the City is subject to the laws of the State of Mississippi. Mississippi law provides that the current City Council of The City of Pascagoula, Mississippi may bind itself contractually for the remainder of its term (approximately thirty-two (32) months) but may not bind successor City Councils without express statutory authority (the “Binding Successor Doctrine”). There is no express statutory authority for the City to enter a Concession Services Agreement exceeding thirty-three (33) months. Thus, the Parties acknowledge that this Agreement could be voided by a successor City Council pursuant to the Binding Successor Doctrine.

**Section 7. Hold Harmless, Defense, and Indemnity.**

7.1. Provider, on its own behalf, as well as on behalf on its employees, agents, and representatives, acknowledges, stipulates, and accepts the dangers, risks, and potential liabilities associated with the provision of janitorial services (the “Permitted Activity”). Provider, its employees, agents, and representatives agree, swear, and affirm to release and hold harmless the City for any and all loss, damage, injury, claim, or liability (including, without limitation, attorneys’ fees) arising from their engagement in the Permitted Activity.

7.2. In consideration of the benefits conferred herein, and to the fullest extent permitted by law, Provider shall defend, indemnify, and hold harmless the City, its agents, and employees, and any other person or entity that the City is required to defend or indemnify (collectively, the “Indemnities”), from and against any and all demands, claims, causes of action, liens, fines, penalties, losses, damages, costs, and expenses (including legal fees), of every kind and nature, regardless of whether in law or in equity, or whether nominal, actual, direct, indirect, consequential, special, punitive, or otherwise (collectively, the “Liabilities”), arising out of, or related to, participation in the Permitted Activity by Provider and its employees, agents, and representatives.

7.3. Upon notice from any of the Indemnities of any Liabilities covered above, Provider shall, at its sole cost, expense, and risk: (1) defend against all Liabilities that may be brought or instituted by any person or entity against any of the Indemnities; (2) pay, satisfy, or otherwise settle all Liabilities, including without limitation, any fine, penalty, award, judgment, or decree that may be rendered against any of the Indemnities; and (3) reimburse each of the Indemnities for all actual legal fees, expenses, costs, and damages, and pay any amounts paid out in satisfying or otherwise settling any Liabilities for which Provider has failed to perform its defense and indemnity obligations, regardless of whether incurred in or out of court or arbitration, on appeal, or as part of any regulatory, administrative, bankruptcy, or other dispute resolution proceeding, or in enforcing this defense and indemnity obligation or any other provision of this Agreement. The defense and indemnity obligations contained herein shall survive the expiration of this Agreement.

7.4. If any portion of Section 7 is determined to be in contravention of applicable law or otherwise invalid or unenforceable, that portion shall be deemed severable and the rest of Section 7 shall be reformed to provide the maximum enforceable defense and indemnity in favor of the Indemnities permitted by applicable law.

**Section 8. General Liability.** The City shall not be liable for any damage to property of Provider or of others entrusted to Provider, nor for the loss of, or damage to, any property of Provider or of others entrusted to Provider by theft or otherwise. The City shall not be liable for any injury or damage to persons or property resulting from fire, water, or rain, or by any other cause of any nature whatsoever.

**Section 9. Liability Insurance.** Provider shall be responsible for providing liability insurance at all times during the term hereof, and shall purchase, pay for, and carry public liability insurance with limits in an amount no less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the annual aggregate, and Provider shall furnish to the City within fifteen (15) days of the Effective Date of this Agreement written evidence of the existence of such insurance. The City shall be named in said policy as an additional insured.

#### **Section 10. Relationship of the Parties.**

10.1. Provider's relationship with City is that of an independent contractor, and nothing in this Agreement is intended to or shall be constructed as creating a partnership, agency, joint venture, employment, or similar relationship.

10.2. Provider acknowledges that it and all its officers, employees, and agents are not an employee or agent of the City for any purpose whatsoever. Provider shall be responsible for all applicable W-9s and work eligibility verification, earnings reports, and tax payments to government agencies, such as the U.S. Internal Revenue Service and the Social Security Administration, including payment of all wages due to Providers employees, insurance premiums, license fees, fingerprinting costs, outfitting expenses, and all other obligations or expenses of Provider relative to its employees in performance of the terms, duties, and obligations under this Agreement.

10.3. Provider acknowledges that its personnel, employees, officers, and agents are not entitled to receive any of the fringe benefits received by the City's employees, including, but not limited to, Workers' Compensation insurance.

10.4. Provider shall not have the authority to enter into any contract on the City's behalf or to otherwise bind the City to any agreement, unless expressly authorized to so do in writing by the City.

## **Section 11. Assignment.**

11.1. This Agreement, or any interest therein, shall not be assigned, transferred, or otherwise encumbered under any circumstances by Provider without the prior written consent of the City.

11.2. Subject to the requirements of Section 11.1, and to the extent authorized by law, covenants and conditions herein contained shall apply to and bind the successors and assigns of all the Parties hereto.

## **Section 12. Extent of Agreement, Severability, and Modification.**

12.1. This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreement, either written or oral.

12.2 In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties. One or more waivers by either Party of any breach of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of any subsequent breach.

12.3 No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by both Parties.

**Section 13. Force Majeure.** Any delay in the performance of any duties or obligations of either Party will not be considered a breach of this Agreement if such delay is caused by any occurrence or contingency beyond the Party's reasonable control, including, but not limited to, acts of God, weather, labor disputes and strikes, market shortage of materials, riots, war, and governmental requirements (any such event, a "Force Majeure Event"), provided that such Party uses reasonable efforts, under the circumstances, to resume performance as soon as reasonably practicable. The obligations and rights of the Party so excused will be extended on a day-to-day basis for the period of time reasonably necessary to overcome the effects of the underlying cause of the delay.

## **Section 14. Successors, Survival, and Remaining Obligations.**

14.1. City and Provider each binds itself and its successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns, or such Party, in respect to all covenants of this Agreement.

15.2. This Agreement and all covenants and warranties contained herein shall survive indefinitely unless agreed otherwise in writing by the Parties.

15.3. Termination of this Agreement, unless expressly provided herein, shall not relieve or release any Party from any rights, liabilities, or obligations that it has accrued prior to the date of such termination and those rights, liabilities, and obligations expressed herein of the Parties upon the termination of this Agreement.

#### **Section 16. Notices.**

16.1. Except as stated otherwise herein, any notice required or permitted to be sent to the City hereunder shall be deemed given when deposited in the United States mail, postage prepaid, certified mail, to the City at the address below:

City of Pascagoula  
c/o City Manager  
Post Office Drawer 908  
Pascagoula, Mississippi 39568

16.2. Except as stated otherwise herein, any notice required or permitted to be sent to the Provider hereunder shall be deemed given when emailed to the Provider at the email address below:

[sjones@wheelersjanitorial.com](mailto:sjones@wheelersjanitorial.com)

**Section 17. Governing Law and Venue.** This Agreement shall be governed and construed in accordance with Mississippi law, without regard to conflict of law principles. In the event any litigation arises between the Parties in connection with this Agreement, venue for such litigation shall lie exclusively in Jackson County, Mississippi, to the exclusion of all other venues.

#### **Section 18. Representations and Warranties.**

18.1. Each Party represents and warrants to the other Party as of the Effective Date that: (i) it has the full power and authority to make, deliver, enter into, and perform pursuant to the terms and conditions of this Agreement, and (ii) it has taken all necessary action to authorize the execution, delivery, and performance of the terms and conditions of this Agreement.

18.2. Each Party represents and warrants to the other Party that it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendation of the Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement.

**Section 19. Headings and Section Names.** The headings and section names in this Agreement are for convenience only and shall not be used to interpret or construe the provisions of this Agreement.

**Section 20. Counterparts.** This Agreement and any amendment or supplement hereto or any waiver granted in connection herewith may be executed in any number of counterparts and by the different Parties on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same agreement.

**IN WITNESS WHEREOF,** the Parties hereto have executed and caused this Agreement to be effective as of the Effective Date first written above.

Michael Silverman

By: \_\_\_\_\_  
Michael Silverman, City Manager  
City of Pascagoula, Mississippi

STATE OF MISSISSIPPI

COUNTY OF JACKSON

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, within my jurisdiction, the within named Michael Silverman, and that he signed and delivered the above and foregoing instrument for and on his behalf after being duly authorized to do so.

SWORN TO AND SUBSCRIBED BEFORE ME, this the \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]

My Commission Expires: \_\_\_\_\_

Stan Jones

By: \_\_\_\_\_  
Stan Jones  
Wheeler's Janitorial

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, within my jurisdiction, the within named Stan Jones, and that he signed and delivered the above and foregoing instrument for and on his behalf after being duly authorized to do so.

SWORN TO AND SUBSCRIBED BEFORE ME, this the \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]

My Commission Expires: \_\_\_\_\_