

**CITY OF GAUTIER
MEMORANDUM**

To: Samantha Abell, City Manager
From: Rachel Honea, Recreation Coordinator
Through: Jeremy Thames, Cultural Services Department Director
Date: October 28, 2015
Subject: 2015 Graveline Pier - BMA Engineering Services

REQUEST:

The Cultural Services Department requests City Council authorization for Profession Engineering Services from Brown, Mitchell & Alexander, INC. (BMA) in the amount of \$36,114.00 for complete engineering services in the design, survey, bidding & construction oversight of the new Tidelands funded Graveline Pier project.

BACKGROUND:

Council has previously directed Cultural Services Department to hire Brown, Mitchell & Alexander, Inc. for preliminary engineering & permitting on the Graveline Pier Project under the Master Services Agreement the City has in place with BMA.

DISCUSSION:

We have completed the initial phase of preliminary engineering and begun permitting process. We now need further authorization to proceed with full Engineering design & related tasks. This proposal represents the second and final costs associated with the design portion of the project.

RECOMMENDATION:

The Cultural Services Department has determined that it is in the best interest of the City to approve the request for Engineering Services as this pier project is an economic tool that brings into favorable notice the opportunities, possibilities, and resources of the City of Gautier and will greatly benefit all citizens.

City Council may:

- 1) Approve the \$36,114 for Engineering Services with Brown, Mitchell & Alexander, Inc. as requested;
- 2) Authorize amending the Engineering Services agreement with Brown, Mitchell & Alexander, Inc. with changes, or
- 3) May decline the request for Engineering Services with with Brown, Mitchell & Alexander, Inc. at this time.

ATTACHMENT(S):

BMA proposal dated October 12, 2015 for Engineering Services for Graveline Pier Project

October 12, 2015

via email: j.thames@gautier-ms.gov

Mr. Jeremy Thames, Director
Cultural Services / Parks & Recreation
City of Gautier
3330 Highway 90
Gautier, Mississippi 39553

**RE: Professional Engineering Services
New Fishing Pier at Graveline Bayou
Gautier, Mississippi**

Dear Mr. Thames:

Brown, Mitchell & Alexander, Inc. is pleased to submit this proposal for professional engineering services for the civil design, bidding and construction administration services associated with the new fishing pier at Graveline Bayou in Gautier. Tasks and fees will be as follows:

A. Topographic Survey

- Control and Topographic Survey of site (no bathymetric range to be provided);
Fee: \$1,388.00 (Hourly, Not to Exceed)

B. Civil Design

- Development of Plans, Specifications and Opinion of Probable Construction Costs for the construction of new fishing pier;
- Coordination with City of Gautier as to Design and Scope of Work;
- Coordination of preliminary test pile(s) on behalf of the City of Gautier;
Fee: \$13,596.00 (Lump Sum)

C. Bidding Assistance

- Distribution of construction documents (Plans and Specifications);
- Receipt and review of bids;
- Preparation of Bid Tabulation and Recommendation of Award;
Fee: \$3,790.00 (Lump Sum)

C. Construction Administration

- Oversight of construction activities
- Review and recommendation of potential Change Orders to City of Gautier;
- Review of Pay Applications;
- Part-time Resident Project Representation;
Fee: \$17,340.00 (Lump Sum)

Jeremy Thames
City of Gautier
October 12, 2015
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The above services can be performed for a combined hourly and lump sum fee of **\$36,114.00** and billed hourly in accordance with the attached Standard Rate Schedule (Attachment A). Attachment B, "General Conditions for Engineering & Surveying Activities" is attached to and a part of this agreement. Reimbursable expenses are in addition to fees for service and will be billed accordingly. Invoices are submitted monthly and payment shall be made upon receipt of and in accordance with BMA's itemized invoice.

If this letter satisfactorily sets forth our agreement, please execute in the space designated below and return to this office via email. If you have any questions or need additional information, please contact me at (228) 864-7612.

Thank you for considering us for this work and we look forward to working with you on this project.

Sincerely,



Dax Alexander, P.E.
President

Attachments

ACCEPTED AND AGREED TO ON THIS _____ DAY OF OCTOBER, 2015

City of Gautier

ATTACHMENT A

BROWN, MITCHELL & ALEXANDER, INC. STANDARD HOURLY RATES

Engineering Staff

Principal Engineer	\$168.00
Professional Engineer V	\$149.00
Professional Engineer IV	\$137.00
Professional Engineer III	\$124.00
Professional Engineer II	\$113.00
Professional Engineer I	\$100.00
Engineer Intern II	\$97.00
Engineer Intern I	\$82.00
Senior Design Technician	\$88.00
Engineer Technician	\$65.00

Project Representation Staff

Resident Project Representative IV	\$88.00
Resident Project Representative III	\$82.00
Resident Project Representative II	\$72.00
Resident Project Representative I	\$65.00

Drafting Staff

CADD Production Manager	\$95.00
Design/CADD Technician	\$91.00
CADD Operators/Drafters	\$85.00

Surveying Staff

Registered Land Surveyor II	\$100.00
Registered Land Surveyor I	\$97.00
Land Surveyor Intern	\$65.00
Survey Crew Chief	\$58.00
Instrument Man	\$52.00

*Alternate personnel may be utilized at their regular hourly rates, which will not exceed listed rates.
These hourly rates are subject to an annual increase of up to 5%.
January 1, 2015*

ATTACHMENT A

**BROWN, MITCHELL & ALEXANDER, INC.
STANDARD HOURLY RATES**

Surveying Staff (Cont'd)

1-Man Survey Crew	\$90.00
2-Man Survey Crew	\$125.00
3-Man Survey Crew	\$150.00

OVERTIME:

1-Man Survey Crew	\$115.00
2-Man Survey Crew	\$155.00
3-Man Survey Crew	\$180.00

Administrative Staff

Administrative III	\$70.00
Administrative II /Specifications Technician	\$60.00
Administrative I	\$52.00
Clerical	\$45.00

*Alternate personnel may be utilized at their regular hourly rates, which will not exceed listed rates.
These hourly rates are subject to an annual increase of up to 5%.
January 1, 2015*

ATTACHMENT B

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The name and registration number of the professional land surveyor who will bear the primary responsibility for the land surveying work on this project is: George M. Hataway, Mississippi Registration No. 1776.