STATE OF MISSISSIPPI
Tate Reeves
Governor

MISSISSIPPI DEPARTMENT OF MARINE RESOURCES
Joe Spraggins, Executive Director

CONTRACT AGREEMENT
Breakwater Marine Construction, LLC
Contract #8200089240

This contract is between the Mississippi Department of Marine Resources ("MDMR") and Breakwater Marine Construction, LLC ("Contractor"). This contract establishes a scope of work for the Contractor to provide transport and deployment of concrete material by barge or vessel from the bulkhead at the MDMR Staging Site ("Site") located on Reichold Road in Gulfport, Mississippi, to reef sites as outlined in Section 1 - Scope of Services and Deliverables.

SUMMARY

Project:	MDMR Staging Site Deployment
Payment:	Not to exceed $2,500,000.00
Term:	From December 3, 2026 to December 2, 2027

Section 1 - SCOPE OF SERVICES AND DELIVERABLES

The Contractor must:

1.1 Load, transport and deploy concrete material by barge or vessel from the bulkhead at the MDMR Staging Site located on Reichold Road in Gulfport to designated reef sites. The reef sites will be within Mississippi's Reef Complex 1 and 2 approximately 20-26 miles south of Pascagoula, MS (Attachment A). MDMR's Artificial Reef Bureau staff and the winning contractor shall collaborate to determine what materials will be used and the method and exact locations for deployment according to the vessel and equipment capabilities, to ensure deployments maximize habitat creation/enhancement. The Contractor must submit a list of the exact equipment to be used for the project. Deployment coordination is requested at least 24 hours prior to

departing the loading zone and Contractor may not proceed with any deployment prior to strategy approval by Artificial Reef Bureau staff.

1.2 The Contractor must meet with MDMR representatives at their office in Biloxi, Mississippi to discuss all aspects of the agreement prior to beginning any work. The date and time of the meeting will be set by mutual agreement following award of the contract.

1.3 The Contractor must provide the MDMR with the name(s) and phone number(s) of the person(s) who will be the official contact(s) for the Contractor.

1.4 The Contractor must provide a list of the exact equipment that will be used to transport and deploy the artificial reef material. **The MDMR reserves the right to inspect all equipment prior to any deployment.**

1.5 The MDMR will provide Global Positioning System (GPS) coordinates and a map of deployment locations.

1.6 An MDMR representative will be onsite to monitor and oversee that the material is being deployed at the MDMR specified locations.

1.7 The MDMR will provide an accredited Marine Surveyor to conduct a draft/displacement survey to determine the tonnage on the barge or vessel. Contractors are strongly encouraged to have a representative(s) present during the Marine Surveyor's survey.

1.8 The Contractor shall provide the manufacturer's draft tables for the barge or vessel designated for this project.

1.9 The Contractor will be responsible for all labor and equipment required for loading, transporting and deploying the artificial reef material, including renting, or leasing cranes, lift barges and/or other equipment and for hiring labor, such as stevedores, riggers and/or machine operators.

1.10 The Contractor must retrieve any and all debris expelled during deployment. If debris is present, the Contractor must provide vessel and personnel to achieve debris collection. The debris collection vessel must be capable of communicating with the captain in charge of the deployment barge. All personnel must wear a United States Coast Guard approved personal flotation device while on deck during deployment and while retrieving any debris.

1.11 The Contractor will remove and dispose of any debris and/or material in the water located at the Gulfport staging site that would impede the Contractor's ability to load the material onto the barge.

1.12 The Contractor must ensure that all equipment used on this project complies with Occupational Safety and Health Administration (OSHA) and United States Coast

Guard requirements. The Contractor may be required to provide MDMR with documents evidencing this compliance.

1.13 The Contractor must notify MDMR twenty-four (24) hours prior to the Contractor's departure to the artificial reef site.

1.14 All deployment activities must be conducted Monday through Friday between 8:00 a.m. and 5:00 p.m. No deployments may be made on weekends or on state and federal holidays.

1.15 In the event that the weather and/or other environmental conditions are deemed unsuitable for deployment by MDMR, the MDMR reserves the right to either cancel or postpone the deployment. There will be NO deployment activity during a Small Craft Advisory or greater.

The deliverables are to include:

1.16 The loading, transport, and deployment of concrete culverts, poles, manholes, box covers, and modules from MDMR Staging Site on Reichold Rd in Gulfport to artificial reef zones approximately 20-26 miles south of Pascagoula. The culverts range in size between three (3) feet to five (5) feet in diameter and four (4) feet to eight (8) feet in length. The poles are approximately 25-35 feet long by 12 inches in diameter. The Contractor will be responsible for ensuring that the barge or vessel is always onsite at the material loading location. The Contractor will be responsible for supplying the barges or vessels in addition to loading and transporting the barges or vessels and offloading the materials onto Mississippi Reef Complex 1 and 2. The water depth at the bulkhead used for loading the material ranges from 10-12 feet near the bulkhead and 20-30 feet just out from the shoreline.

Section 2 - CONSIDERATION AND PAYMENT

2.1 **Consideration.** As consideration for the performance of this agreement, the MDMR agrees to pay the Contractor for work performed.

2.2 **Payment.** The MDMR agrees to pay the Contractor $117.00 per ton for material deployed and accepted by MDMR, based on tonnage determined by the independent marine surveyor. Payments will be made within 45 days of receipt of an approved invoice. The total payment for the entire project must not exceed $2,500,000.00. Under no circumstances will payment be made for work performed before the execution or after the expiration of this contract.

2.3 **How Payments Are Made.** The MDMR makes payments electronically through the State's Accounting System. Payments are deposited into the Contractor's chosen bank account. The MDMR may require the Contractor to electronically submit invoices and

supporting documentation. The Contractor understands that the MDMR is exempt from paying taxes.

2.4 **Invoices.** The Contractor may submit a detailed invoice for work completed on a monthly basis or in 20% increments upon successful completion of work and Scope of Services and Deliverables in order to initiate the payment process. Invoices must include the following:

1. The contract number (8200089240);
2. The Purchase Order number; and,
3. Date of completion.

Section 3 - PERIOD OF PERFORMANCE

The period of performance for this Agreement is from December 3, 2026 through December 2, 2027. Subject to the availability of funds and at the sole discretion of the MDMR with the agreement of the Contractor, MDMR reserves the right to exercise an option to renew the contract for one (1) successive year under the same prices, terms, and conditions as stated herein. The total number of renewal years permitted shall not exceed one. Once the project is completed to the MDMR's satisfaction and all approved invoices are paid, the MDMR may terminate this contract, at its discretion.

Section 4 - INSURANCE REQUIREMENTS

You must provide evidence of your policies within ten (10) calendar days of execution of the contract.

All insurance policies must be issued by companies licensed or holding a Certificate of Authority from the Mississippi Department of Insurance. All liability insurance policies must provide coverage to the MDMR as an additional insured.

You must hold the following insurance throughout the term of the contract:

Coverage Type	**Amount**
Workers' Compensation (as required by Mississippi law or other applicable state law)	
General Liability	
Aggregate	$1,000,000
Personal Injury/Bodily Injury and Property Damage (Per Occurrence)	$500,000
Fire Damage (Per Fire)	$50,000
Medical Expense (Per Person)	$5,000

Section 5 - BONDS

No bonds required.

Section 6 - CERTIFICATIONS

The Contractor certifies the following:

6.1 **Representation Regarding Gratuities.** Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set

forth in Section 6-204 of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations,* a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at dfa.ms.gov.

6.2 **Environment.** Contractor must comply with all standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387).

6.3 **The Contractor warrants:**

a) That entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind;

b) Notwithstanding any other provision of this contract to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this contract; and,

c) That it is qualified to perform the scope of services of this contract and is authorized to do business in the State of Mississippi to the extent required by Mississippi law.

Section 7 - REQUIRED SERVICE CONTRACT CLAUSES

APPLICABLE LAW

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of Mississippi.

APPROVAL

It is understood that if this contract requires approval by the Public Procurement Review Board ("PPRB") and/or the Department of Finance and Administration Office of Personal Service Contract Review ("OPSCR"), and this contract is not approved by PPRB and/or OPSCR, it is void and no payment shall be made hereunder.

AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of MDMR to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt the appropriated funds. If the funds anticipated for the continuing time fulfillment of the agreement are, at any time, not forthcoming or insufficient, regardless of the source of funding, The MDMR shall have the right upon 10 business days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expense to the MDMR of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

COMPLIANCE WITH EQUAL OPPORTUNITY IN EMPLOYMENT POLICY

Contractor understands that the MDMR is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and Contractor agrees

during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services

COMPLIANCE WITH LAWS

Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified.

NO LIMITATION OF LIABILITY

Nothing in this agreement shall be interpreted as excluding or limiting any liability of the Contractor for harm arising out of the Contractor's or its subcontractors' performance under this agreement.

REPRESENTATION REGARDING GRATUITIES

Contractor represents that it has not, is not, and will not offer, give, or agree to give any employee or former employee of the MDMR a gratuity or offer of employment in connection with any approval, disapproval, recommendation, development, or any other action or decision related to the solicitation and resulting contract. Contractor further represents that no employee or former employee of the MDMR has or is soliciting, demanding, accepting, or agreeing to accept a gratuity or offer of employment for the reasons previously stated; any such action by an employee or former employee in the future, if any, will be rejected by contractor. Contractor further represents that it is in compliance with the Mississippi Ethics in Government laws, codified at Mississippi Code Annotated §§ 25-4-101 through 25-4-121, and has not solicited any employee or former employee to act in violation of said law.

REQUIRED PUBLIC RECORDS AND TRANSPARENCY

Upon execution of a contract, the provisions of the contract which contain the personal or professional services provided, the unit prices, the overall price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information pursuant to Mississippi Code Annotated § 25-61-9(7). The contract shall be posted publicly on www.transparency.ms.gov and shall be available at the Agency for examination, inspection, or reproduction by the public. The contractor acknowledges and agrees that the MDMR and this contract are subject to the *Mississippi Public Records Act of 1983* codified at Mississippi Code Annotated §§ 25-61-1, *et seq*. and its exceptions, Mississippi Code Annotated § 79-23-1, and the *Mississippi Accountability and Transparency Act of 2008*, codified at Mississippi Code Annotated §§ 27-104-151, *et seq*.

STOP WORK ORDER

The MDMR may, by written order to Contractor at any time, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a period of time specified by the MDMR. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize any further cost to the MDMR. Upon expiration of the stop work order, Contractor shall resume providing the services which were subject to the stop work order, unless the MDMR has terminated that part of the agreement or terminated the agreement in its

entirety. The MDMR is not liable for payment for services which were not rendered due to the stop work order.

E-PAYMENT

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Agency agrees to make payment in accordance with Mississippi "Timely Payments for Purchases by Public Bodies" laws, which generally provide for payment of undisputed amounts by the Agency within 45 calendar days of receipt of invoice. Mississippi Code Annotated § 31-7-301, *et seq*.

PAYMODE

Payments by the MDMR using the state's accounting system shall be made and remittance information provided electronically as directed by the state and deposited into the bank account of Contractor's choice. The MDMR may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the Agency is exempt from the payment of Mississippi taxes. All payments shall be in United States currency.

PROCUREMENT REGULATIONS

This contract shall be governed by the applicable provisions of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available on the Mississippi Department of Finance and Administration's website (www.dfa.ms.gov). Any bidder/offeror responding to a solicitation for personal and professional services and any contractor doing business with a state Agency is deemed to be on notice of all requirements therein.

PROPERTY RIGHTS

Property rights do not inure to Contractor until such time as services have been provided under a legally executed contract. Contractor has no legitimate claim of entitlement to the provision of work hereunder and acknowledges that the MDMR may terminate this contract at any time for its own convenience.

E-VERIFICATION

If applicable, Contractor represents and warrants that it will ensure its compliance with the *Mississippi Employment Protection Act* and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 and 71-11-3. Contractor agrees to provide a copy of each verification upon request of the MDMR subject to approval by any agencies of the United States Government. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws.

The breach of this clause may subject Contractor to the following: (1) termination of this contract and exclusion pursuant to Chapter 15 of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*; (2) the loss of any license, permit, certification or other document granted to Contractor by an agency, department, or governmental entity for the right to do business in Mississippi; or (3) both. In the event of such termination, Contractor would

also be liable for any additional costs incurred by the Agency due to Contract cancellation or loss of license or permit to do business in the state.

TERMINATION

Termination for Convenience. The MDMR may, when the interests of the Agency so require, terminate this contract in whole or in part, for the convenience of the Agency. The MDMR shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective. Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

Termination for Default. If the MDMR gives the Contractor a notice that the personal or professional services are being provided in a manner that is deficient, the Contractor shall have 30 days to cure the deficiency. If the Contractor fails to cure the deficiency, the MDMR may terminate the contract for default and the Contractor will be liable for the additional cost to the MDMR to procure the personal and professional services from another source. Termination under this paragraph could result in Contractor being excluded from future contract awards pursuant to Chapter 15 of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*. Any termination wrongly labelled termination for default shall be deemed a termination for convenience.

Section 8 - MISCELLANEOUS CLAUSES

8.1 **Trade Secrets, Commercial and Financial Information.** It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

8.2 **Termination Upon Bankruptcy.** This contract may be terminated in whole or in part by the MDMR upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

8.3 **Attorneys' Fees and Expenses.** In the event Contractor defaults on any obligations under this Agreement, Contractor shall pay to the MDMR all costs and expenses, without limitation, incurred by the MDMR in enforcing this Agreement or reasonably related to enforcing this Agreement. This includes but is not limited to investigative fees, court costs, and attorneys' fees. Under no circumstances shall the MDMR be obligated to pay attorneys' fees or legal costs to Contractor.

8.4 **Indemnification.** To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the MDMR, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement.

In the MDMR's sole discretion, upon approval of the Office of the Mississippi Attorney General and the MDMR, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the Office of the Mississippi Attorney General and the MDMR. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the MDMR shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General and the MDMR, which shall not be unreasonably withheld.

8.5 **Contractor Personnel.** The MDMR shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Contractor. If the MDMR reasonably rejects staff or subcontractors, Contractor shall provide replacement staff or subcontractors satisfactory to the MDMR in a timely manner and at no additional cost to the MDMR. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.

8.6 **Change in Scope of Work.** The MDMR may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by Contractor that the scope of the project or of Contractor's services has been changed, requiring changes to the amount of compensation to Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the MDMR and Contractor.

If Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to Contractor, Contractor must immediately notify the MDMR in writing of this belief. If the MDMR believes that the particular work is within the scope of the contract as written, Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the contract.

8.7 **Failure to Enforce Does Not Constitute Waiver.** Failure by the MDMR at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any

part thereof or the right of the MDMR to enforce any provision at any time in accordance with its terms.

8.8 **Independent Contractor Status.** Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the MDMR. Nothing contained herein shall be deemed or construed by the MDMR, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the MDMR and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the MDMR or Contractor hereunder creates or shall be deemed to create a relationship other than the independent relationship of the MDMR and Contractor.

Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the MDMR. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the MDMR, and the MDMR shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees.

The MDMR shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the MDMR shall not provide to Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the MDMR for its employees.

8.9 **Record Retention and Access to Records.** Contractor shall maintain such financial records and other records as may be prescribed by the MDMR or by applicable federal and state laws, rules, and regulations. Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the MDMR or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are relevant to this agreement. All records related to this agreement shall be retained by the Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

8.10 **Recovery of Money.** Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to the MDMR, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and the MDMR. The rights of the MDMR are in addition and without prejudice to any other right the MDMR may have to claim the amount of any

loss or damage suffered by the MDMR on account of the acts or omissions of Contractor.

8.11 **Third Party Action Notification.** Contractor shall give the MDMR prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.

8.12 **Unsatisfactory Work.** If, at any time during the contract term, the service performed or work done by Contractor is considered by the MDMR to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by the MDMR, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, the MDMR shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.

8.13 **Force Majeure.** Each party shall be temporarily excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("force majeure events"). When such a cause arises, Contractor shall notify the MDMR in writing at its earliest reasonable opportunity of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. All parties shall make reasonable efforts to minimize the impact of the force majeure event on contract performance. The MDMR may exercise any rights it has under the contract which are available when neither party is in default.

8.14 **Waiver.** No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by the contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

8.15 **Severability.** If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the

agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

8.16 **Summary.** The summary in this agreement is for convenience only, and is not a complete expression of the terms of this agreement. In any case in which the terms of the agreement and the summary conflict, the terms of the agreement control.

8.17 **Entire Agreement.** This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the MDMR and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the MDMR or Contractor on the basis of draftsmanship or preparation hereof.

8.18 **Changes.** The parties can amend this Agreement only by a written document signed by both parties.

8.19 **No Delegation (Subcontracting).** Contractor acknowledges that it was selected by the MDMR to perform the work based upon Contractor's special skills and expertise. The Contractor must not delegate its duties under this Agreement in whole or in part without the prior written consent of the MDMR. The MDMR may, in its sole discretion, approve, approve with conditions, or deny consent without reason. Any attempted delegation or transfer of its obligations without consent is null and void. No approval by the MDMR of any subcontract is consent to increase the maximum price of this Agreement.

8.20 **Oral Statements.** No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. All modifications to the Agreement shall be made in writing by the MDMR, agreed to by Contractor, and approved by the Public Procurement Review Board, if required.

8.21 **Notices:** All notices required or permitted to be given under this Agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor:
Jamie Drennan, Owner
Breakwater Marine Construction, LLC
6531 Bridgeview Drive
Biloxi, MS 39532
breakwatermarine@yahoo.com

For the MDMR:
Rick Kinnard, Procurement Director
Mississippi Department of Marine Resources, Procurement Office
1141 Bayview Avenue
Biloxi, MS 39530
rick.kinnard@dmr.ms.gov

Section 9 - ACKNOWLEDGEMENT

The Contractor acknowledges that it:

A. Has had sufficient time to review and consider the contract thoroughly;

B. Has read and understands the terms and scope of this contract and its obligations hereunder; and,

C. Has been given an opportunity to obtain independent legal advice, or such other advice as it may desire concerning the interpretation and effect of this contract.

Section 10 - INCORPORATION OF DOCUMENTS

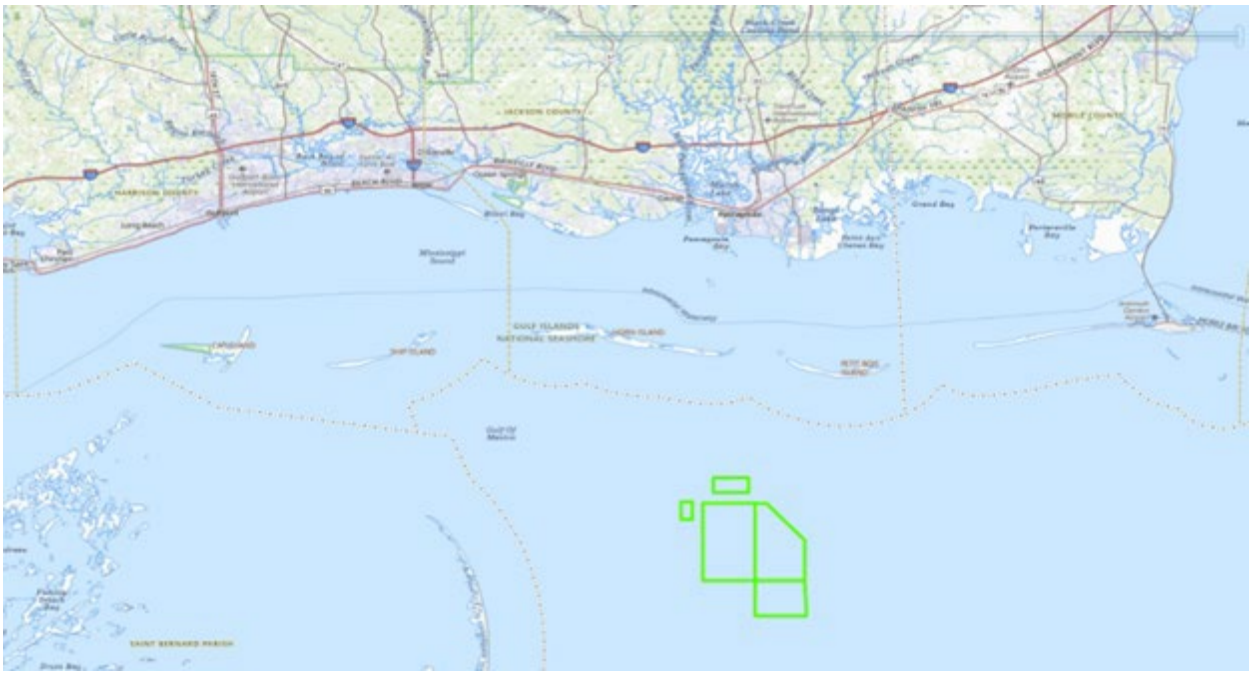
The following documents are incorporated into and made part of this agreement by reference:

1. Attachment A – Map of Deployment Locations
2. Attachment B – Federal Assurances

MS DEPARTMENT OF MARINE RESOURCES	**BREAKWATER MARINE CONSTRUCTION, LLC**
_____	_____
Joe Spraggins, Executive Director	Jamie Drennan, Owner
_____	_____
Date	Date

Attachment A

Map of Deployment Locations



Attachment B

Federal Assurances

CONTRACTOR UNDERSTANDS THAT THIS AGREEMENT IS FUNDED, IN WHOLE OR IN PART, BY A GRANT FROM THE GULF OF MEXICO ENERGY SECURITY ACT AND AGREES TO COMPLY WITH ALL FEDERAL LAWS AND REGULATIONS APPLICABLE TO THE GRANT INCLUDING, BUT NOT LIMITED TO:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, sex, age, religion, national origin, physical handicap, disability, genetic information or any other consideration made unlawful by federal, state, or local laws. 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, creed, sex, age, religion, national origin, physical handicap, disability, genetic information or any other consideration made unlawful by federal, state, or local laws. Affirmative action includes, but is not 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.
2. The Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, color, creed, sex, age, religion, national origin, physical handicap, disability, genetic information or any other consideration made unlawful by federal, state, or local laws.
3. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representatives of the Contractor's commitments under this section and will post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity), and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will comply with all provisions of Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency).
6. The Contractor will comply with the provisions of E.O. 13798 and OMB, M-20-09 (Guidance Regarding Federal Grants which prohibits conditioning sub-awards of

Federal grant money in a manner that would disadvantage grant applicants based on their religious character).

7. 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, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance.
8. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the rules, regulations, or orders, this contract may be 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, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
9. Contractor will comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to: (a) Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681 *et seq.*), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability; and (i) the requirements of any other nondiscrimination statute(s) which may apply to the agreement.
10. Contractor will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 *et seq.*) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone

Management Act of 1972 (16 U.S.C. §§ 1451 *et seq.*); (f) compliance with the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 *et seq*.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq*.), and the Flood Disaster Protection Act (42 U.S.C. §§ 4002 *et seq*.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (42 U.S.C. §§ 300f *et seq.*); (h) compliance with the Coastal Barriers Resources Act (16 U.S.C. §§ 3501 *et seq.*); (i) protection of endangered species under the Endangered Species Act of 1973, (16 U.S.C. §§ 1531 *et seq.*); and, (j) compliance with the Clean Water Act, (33 U.S.C. §§ 1344 *et seq.*)

11. Contractor will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.
12. Contractor will comply with the National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*) and the Archeological and Historic Preservation Act of 1974 (54 U.S.C. § 312502 *et seq.*)
13. Contractor will comply with the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*)
14. Contractor will comply with the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 *et seq.*)
15. Contractor will comply with the requirements of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104), which prohibits private entities from: (1) engaging in severe forms of trafficking in persons during the period of time that the contract is in effect; (2) procuring a commercial sex act during the period of time that the contract is in effect; or, (3) using forced labor in the performance of the contract.
16. Contractor will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874), which prohibits a contractor engaged in a federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract.
17. Contractor will comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102) and DOC implementing regulations published at 15 C.F.R. Part 29 "Government-wide Requirements for Drug-Free Workplace (Financial Assistance)", which require that the Contractor take steps to provide a drug-free workplace.
18. Pursuant to E.O. 13043 (62 FR 19217, 1997), Contractor will enforce on-the-job seat belt policies and programs when employees are operating company-owned, rented, or personally owned vehicles.
19. Contractor will comply with the Pilot Program for Enhancement of Employee Whistleblower Protections and shall inform its employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

20. Contractor will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).
21. Contractor will comply with Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations").
22. Contractor will comply with the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 *et seq.*).
23. Contractor will comply with the Rivers and Harbors Act (33 U.S.C. § 407).
24. Contractor will comply with the Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001).
25. Contractor will comply with Executive Order 13112 (Invasive Species, February 3, 1999).
26. Contractor will comply with the Fish and Wildlife Coordination Act (16 U.S.C. § 662 *et seq.*).
27. Contractor will comply with the Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*).
28. Contractor will comply with the False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively, and the Civil False Claims Act (31 U.S.C. §§ 3729 – 3722).
29. Contractor will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*).
30. Contractor will comply with the Fly America Act (49 U.S.C. § 40118).
31. Contractor will comply with E.O. 13043 (Increasing Seat Belt Use in the United States).
32. Contractor will comply with E.O.s 13555 (White House Initiative on Educational Excellence for Hispanics), 13592 (Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and University), and 13779 (White House Initiative to Promote Excellence and Innovation at Historically Black Colleges and Universities).
33. Contractor will comply with the Federal Policy on Research Misconduct issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260).
34. Contractor will comply with 15 C.F.R. Part 27 (Protection of Human subjects).
35. Contractor will comply with 7 U.S.C. §§ 2131 *et seq.* (Laboratory Animal Welfare Act of 1966), 16 U.S.C. §§ 1362 *et seq.* (Marine Mammal Protection Act), and 16 U.S.C. §§ 4701 *et seq.* (Nonindigenous Aquatic Nuisance Prevention and Control Act).
36. Contractor will comply with Homeland Security Presidential Directive 12 (Policy for a Common Identification Standard for Federal Employees and Contractors).
37. Contractor will comply with the Department of Commerce Bureau of Industry and Security Export Administration Regulations (EAR), 15 C.F.R. § 730 *et seq.*

38. Contractor will comply with the Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 (Reporting Subawards and Executive Compensation).
39. Contractor will comply with all applicable provisions of Section 70914 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58), also known as the Build America, Buy America Act.
40. Contractor will comply with 2 C.F.R. §§ 200, *et seq.*, if applicable, including but not limited to § 200.112 (Conflicts of interest), § 200.318 (General procurement standards), § 200.331-333 (Subrecipient monitoring and management), § 200.317 (Procurements by states) or § 200.318 (General procurement standards), § 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), § 200.332 (Domestic preferences for procurements), § 200.323 (Procurement of recovered materials), § 200.327 (Contract provisions), § 200.450 (Lobbying), 200.322 (Domestic preferences for procurements), §200.303(e) (Safeguarding protected personally identifiable information and other confidential or sensitive personal or business information), Appendix XII to 2 C.F.R 200 (Recipient Integrity and Performance Matters), § 200.215 (Never Contract with the Enemy), and § 200.216 (Prohibition on certain telecommunications and video surveillance services or equipment).
41. Contractor acknowledges that this contract is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information).
42. Contractor will comply with all applicable requirements of all other federal laws, executive orders, regulations, and policies governing this program.
43. Contractor understands that the United States expressly disclaims any and all responsibility or liability to the Contractor or third persons for the actions of the Contractor or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this contract.
44. Contractor understands that acceptance of this contract by the Contractor does not in any way constitute an agency relationship between the United States and the Contractor.
45. Contractor understands that it is subject to Subpart C of 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)."