

City of Diamondhead, MS  
**Request for Council Action**

**TO:** Honorable Mayor and Members of Council  
**FROM:** City Manager

Ordinance  Resolution  Agreement/Contract  Info Only  Work Session Only

**AGENDA LOCATION:**  Consent Agenda  Regular Agenda

**FORMAL AGENDA DATE REQUESTED:**

**ORDINANCE/RESOLUTION CAPTIONS or ISSUE:** Discussion and possible vote to indicate the exact location where the Mayor and Council think is the best location for the proposed gazebo.

**SUMMARY BACKGROUND:** There seems to have been some miscommunication in terms of the exact location of the proposed location.

**IMPACT IF DENIED:** Hopefully there will be consensus on the best possible location for a gazebo.

**IMPACT IF APPROVED:** Unable to determine.

**FINANCIAL IMPACT:**  
None

**REQUIRED SIGNATURES**

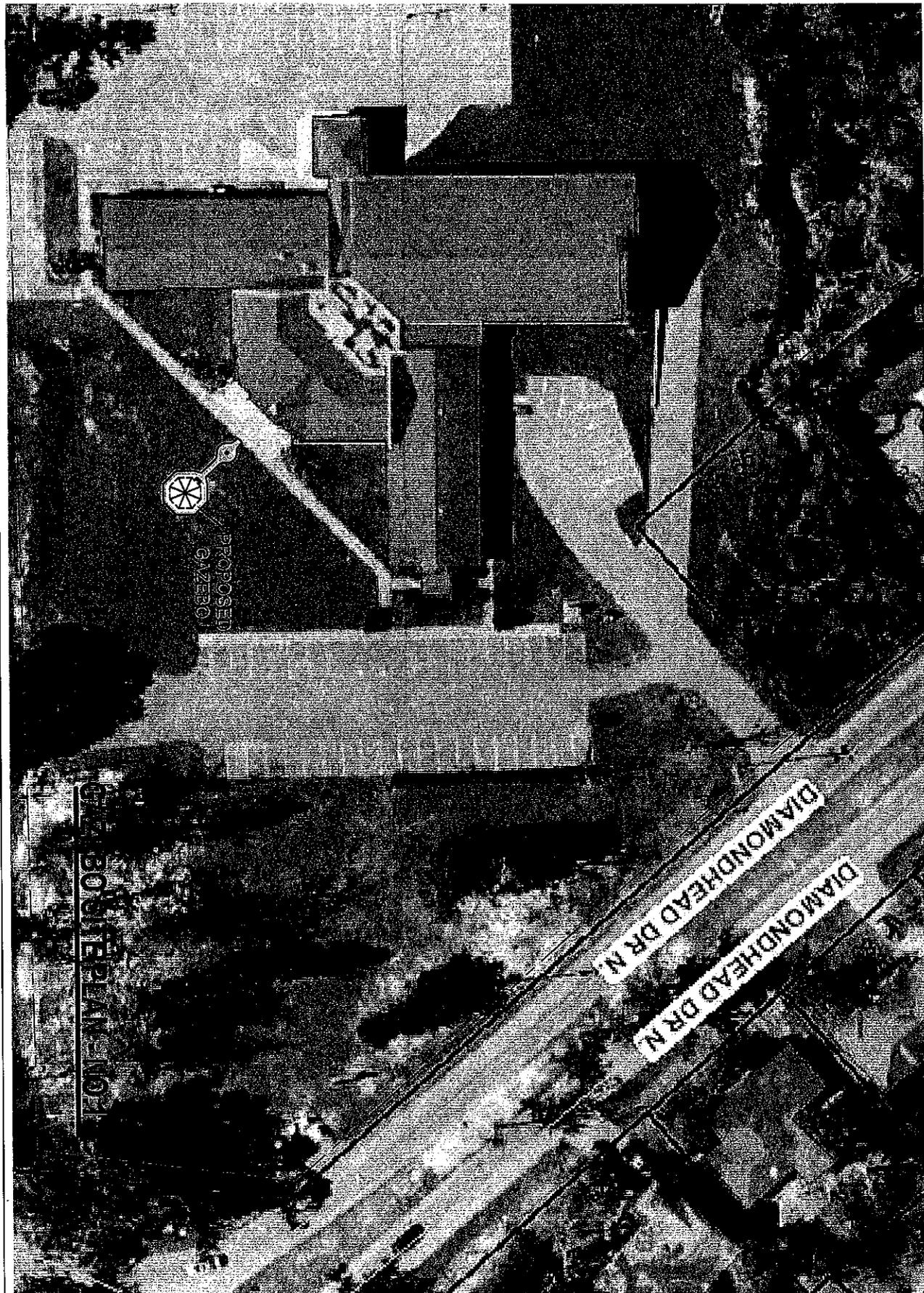
**REQUESTED BY:**

**City Manager:**

**City Attorney:**

**COUNCIL ACTION:**

Approved  Denied  Tabled/Deferred  Info Only **Completed:**



GAZEBO SITE PLAN (NO. 1)

PROPOSED  
GAZEBO

DIAMONDHEAD DR N.

DIAMONDHEAD DR N.

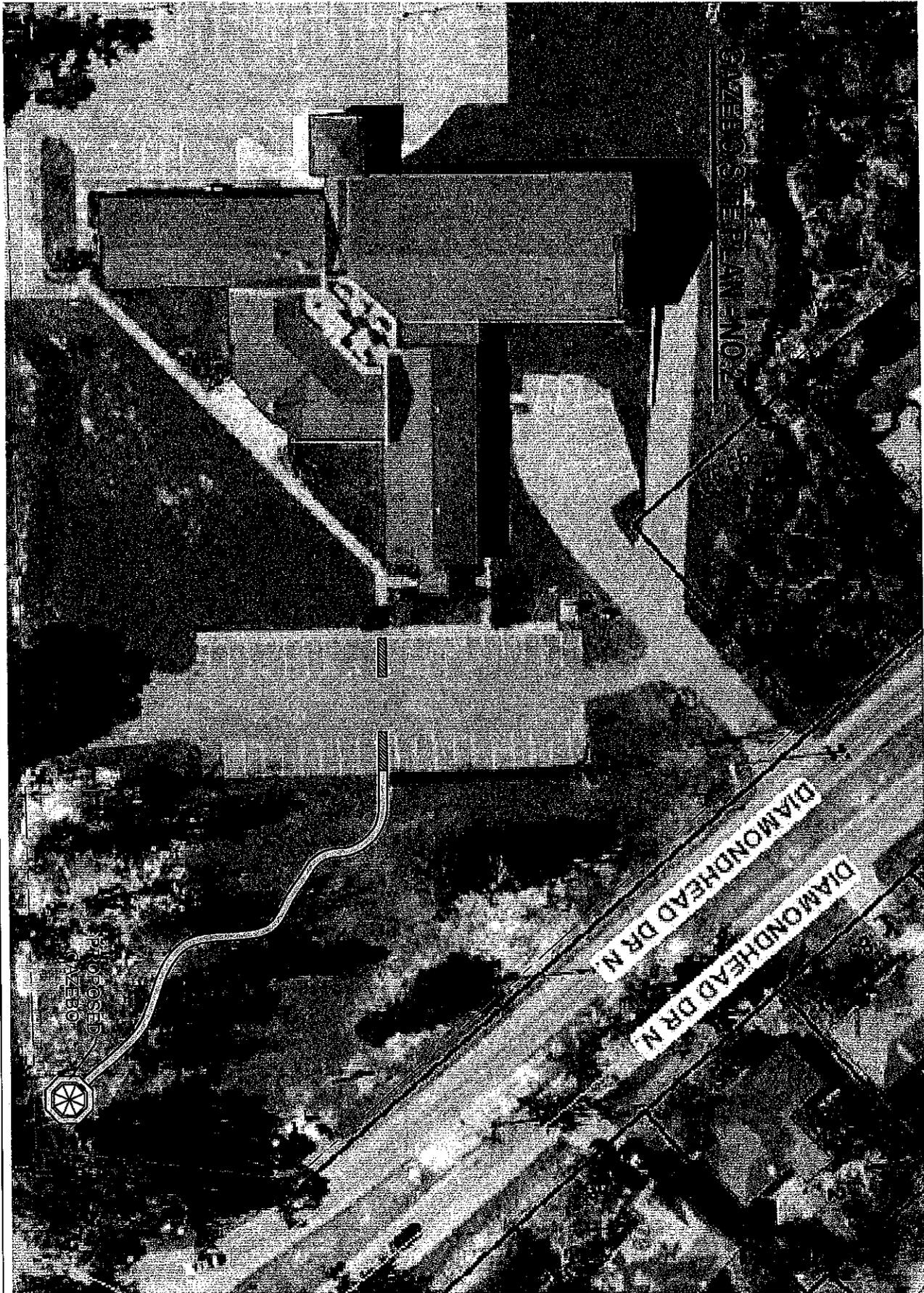
Scale	1" = 100'
North Arrow	

**SEYMOUR ENGINEERING**  
 PHONE: 228-385-2330 925 TOMMY MURRO DRIVE, SUITE G BELLEVILLE, MISSISSIPPI 39312 FAX: 228-385-2331

Project Name  
**DIAMONDHEAD CITY HALL  
 DIAMONDHEAD, MS 39526**

Sheet Title  
**GAZEBO SITE PLAN**

DATE	BY	CHKD	APP'D



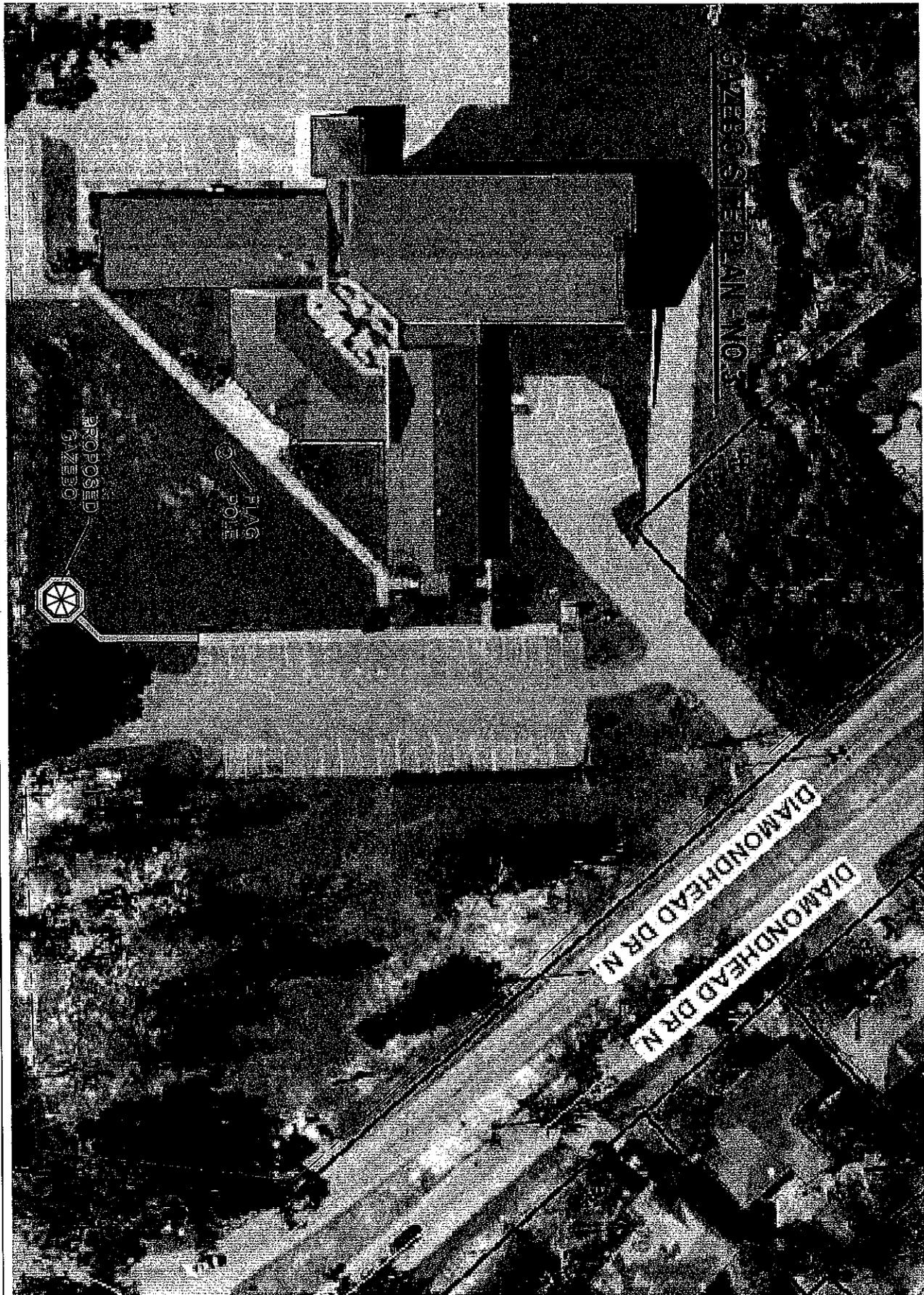
Scale	1" = 100'
North Arrow	

**SEYMOUR ENGINEERING**  
 PHONE: 228-343-1330 928 TOMMY MUNRO DRIVE, SUITE G BILBO, MISSISSIPPI 39532 FAX: 228-343-1333

Project Name  
**DIAMONDHEAD CITY HALL  
 DIAMONDHEAD, MS 39526**

Sheet Title  
**GAZEBO SITE PLAN**

DATE	BY	CHKD	APP'D



Scale  
 1" = 10'-0"

**SEYMOUR ENGINEERING**  
 PHONE: 228-348-2350 825 TOMMY MUNRO DRIVE, SUITE 0 BLOOMING, MISSISSIPPI 39532 FAX: 228-348-2353

Project Name  
**DIAMONDHEAD CITY HALL  
 DIAMONDHEAD, MS 39526**

Sheet Title  
**GAZEBO SITE PLAN**

DATE	BY	CHKD	APP'D

**AGREEMENT**

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2014, by and between the City of Diamondhead, Mississippi (hereinafter referred to as "Grantee"), and Professional Grant Management Services, LLC (hereinafter referred to as "Contracted Party"), who agree and contract as follows:

**WITNESSETH THAT:**

WHEREAS, the City of Diamondhead applied for and received a Community Development Block Grant Public Facilities Grant Project No.1131-14-432-PF-01 for ADA Improvements to City Hall under Title I of the Housing and Community Development Act of 1974, as amended; and

WHEREAS, the City of Diamondhead obtained application preparation assistance and needs and subsequent administrative assistance in implementing the Community Development Block Grant Public Facilities Project; and

WHEREAS, the City of Diamondhead desires to engage the Consultant to render certain technical and professional services hereinafter described in connection with the application preparation and subsequent implementation of the Community Development Block Grant Public Facilities Project No. 1131-14-432-PF-01, and the Consultant desires to provide said services; and

WHEREAS the City of Diamondhead and the Consultant acknowledge that this contract shall not become effective until the date of execution of a Grant Agreement for the above referenced Community Development Block Grant.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Employment of Contracted Party. The Grantee hereby agrees to employ the Contracted Party, and the Contracted Party hereby agrees to perform services set forth hereinafter in connection with the CDBG Community Development Block Grant Program, which will be financed by grant funds provided by HUD to the State of Mississippi under Title I of the Housing and Community Development Act of 1974, as amended.
2. Scope of Services. The Contracted Party agrees to satisfactorily render and provide services hereinafter set forth in Exhibit "A", Scope of Services.
3. Disposition of Work. All contract documents and similar work materials prepared by the Contracted Party in completing the scope of services, set forth as Exhibit "A", shall be the property of the Grantee.
4. Period of Performance. The services provided under this Agreement by the Contracted Party shall continue as long as is mutually agreeable to the parties hereto or until the project is closed out. The terms of the Agreement, specifically the "Scope of Services" and "Compensation" to the Contracted Party can, however, be reviewed annually and modified as is mutually agreeable to the two parties.
5. Termination for Convenience of Contracted Party. The Contracted Party may terminate this Agreement at any time by giving written notice to the Grantee of such termination and specifying the effective date thereof. Such written notice shall be furnished the Grantee at least thirty (30) days before the effective date of termination. In that event, all finished or unfinished documents and other materials shall become the property of the Grantee. In the event of termination for convenience by Contracted Party, all payments, after the date of termination, shall be forfeited to the Grantee, and any obligation by the Local Government to the Consultant shall be terminated.
6. Compensation Due to Contracted Party. The Grantee agrees to pay and the Contracted Party agrees to perform the services for a lump sum of \$24,989.00 (\$11,000.00 CDBG and

\$13,989.00 Local Funds). The Contracted Party shall invoice the Grantee in accordance with the payment schedule set forth in Exhibit "B".

7. Special Provisions and Regulations – U. S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program: If applicable, Contracted Party agrees to comply with all special provisions and regulations required by HUD as set out in "Exhibit C". The term "Applicant" in this exhibit is synonymous with the term "Grantee".

8. Successors and Assigns: The Grantee and Contracted Party each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns, or such party, in respect to all covenants of this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the Grantee and the Contracted Party.

9. Miscellaneous Provisions. This Agreement shall be construed in accordance with the laws of the State of Mississippi. In case one or more of the provisions in the Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, non-enforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Any amendments to this Agreement shall not be effective unless consented to, in writing, by both parties.

IN WITNESS WHEREOF, the City of Diamondhead and the Contracted Party have executed this Agreement this the \_\_\_\_ day of \_\_\_\_\_ 2014.

Professional Grant Management Services

By: \_\_\_\_\_  
Michele Moore, President

ATTEST:

\_\_\_\_\_

The City of Diamondhead, Mississippi

By: \_\_\_\_\_  
Clovis Reed, City Manager

ATTEST:

\_\_\_\_\_

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

The Contracted Party shall do, perform, and carry out in a satisfactory and proper manner such work as the Grantee determines is necessary to accomplish the activities funded by the Community Development Block Grant Program. Specific job tasks that the Contracted Party shall assist the Grantee in performing include, but are not necessarily limited to, the following:

A. **Application Preparation**

B. **General Services**

1. Establish a filing system to keep and maintain the necessary records as appropriate for implementation of the grant in accordance with applicable federal, state, and local rules and regulations. The filing system and records shall include, among other things, the following records:

- a. Citizen Participation
- b. Environmental
- c. Procurement
- d. Labor Standards
- e. Financial Management
- f. Other Resources
- g. Equal Opportunity
- h. General Correspondence

C. **The Contracted Party shall be responsible for:**

- 1. Overall coordination of project activities;
- 2. Attending MDA/HUD monitoring visits, meetings, etc;
- 3. Establishing and maintaining financial records;
- 4. Preparing the necessary documentation to request funds from the State; and
- 5. Providing all other services considered normal administrative services within the course of this Agreement.

D. **Close-Out Project**

The Contracted Party shall be available at all times to assist the Grantee in performing such work in a satisfactory and proper manner as the Grantee deems necessary under this program including the acceptance and approval of close-out documents by the Mississippi Development Authority.

The City or Consultant may, from time to time, request changes in terms of this Agreement. Such changes, including any increase or decrease in the amount of compensation due the Consultant, shall be mutually agreed upon by the parties hereto and shall be incorporated in written amendments to this Contract.

**EXHIBIT "B"**

**COMPENSATION DUE TO CONSULTANT  
and  
METHOD OF PAYMENT**

The Grantee agrees to pay the Contracted Party in two phases. Phase I will include all services rendered pertaining to the application preparation, and Phase II will include all services rendered pertaining to administration and implementation of the Community Development Block Grant Project.

<b>Phase I</b>		
1.	Application Preparation	\$ 5,000
<b>Phase II</b>		
1.	Completion of Environmental Review Procedure	2,500
2.	For services from Notification of Grant Award to Release of Funds from the Mississippi Development Authority including, but not limited to: establishment of Local Government's record keeping and financial management system in accordance with all Federal and State laws and regulations; preparation of a Fair Housing Resolution; preparation of a Code of Conduct and Procurement Procedures; assist the Local Government in procuring professional services as needed; establish a filing system; document eligibility of each CDBG activity; preparation of contracts for professional services; review grant agreements; and any other services necessary to implement the Local Government's project.	
3.	Beginning with the first month following the execution of the Construction contract, the Consultant will submit monthly invoices in the amount of \$1,249.08 for services rendered as outlined in items B and C in the Scope of Services. Invoices will be submitted for twelve (12) consecutive months.	14,989
4.	Retainage for acceptance and approval of close-out documents by the Mississippi Development Authority.	2,500
	<b>Total Compensation</b>	<hr/> \$24,989

**EXHIBIT "C"**

**SPECIAL PROVISIONS AND REGULATIONS  
STIPULATED BY  
THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)  
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM**

For the purpose of clarification, the Contracted Party shall refer to the firm providing professional services to the Grantee as specified in the contract to which this document is attached.

**1. Access of Grantee, State of Mississippi, HUD and Others to CDBG Documents, Papers, and Books**

The Contracted Party agrees to allow the Grantee, State of Mississippi, HUD, the Comptroller General of the United States, and any of their duly authorized representatives access to any books, documents, papers, and records of the Contracted Party which are directly pertinent to the CDBG Program for the purpose of making audits, examinations, excerpts, and transcriptions.

**2. Termination of Contract For Cause**

If, through any cause, the Contracted Party shall fail to fulfill in timely and proper manner, his obligations under this Contract, or if the Contracted Party shall violate any of the covenants, agreements, or stipulations of this Contract, the Grantee shall thereupon have the right to terminate this Contract by giving written notice to the Contracted Party of such termination and specifying the effective date of such termination. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contracted Party shall entitle the Contracted Party's receipt of just and equitable compensation for any satisfactory work completed on such documents.

Notwithstanding the above, the Contracted Party shall not be relieved of liability to the Grantee for damages sustained or the Grantee by virtue of any breach of the Contract by the Contracted Party. The Owner may withhold any payments to the Contracted Party for the purpose of set off until such time as the exact amount of damages due the Grantee from the Contracted Party is determined.

**3. Termination for Convenience of the Grantee**

The Grantee may terminate this Contract any time by a notice in writing from the Grantee to the Contracted Party. If the Contract is terminated by the Owner as provided herein, the Contracted Party will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contracted Party covered by this Contract, less payments of compensation previously made provided that if less than sixty percent of the services covered by this Contract have been performed upon the effective date of such termination, the Contracted Party shall be reimbursed (in addition to the above payment) for that portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contracted Party during the Contract period which are directly attributable to the incomplete portion of the services covered by this Contract.

**4. Records**

All records required to be kept on the project shall be maintained for at least three years after final payments and until all other pending matters under the grant are closed.

5. **Health and Safety Standards**

All parties participating in this project agree to comply with Section 107 of the Contract Work Hours and Safety Standards Act. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

6. **Environmental Compliance**

Contracts, subcontracts, and subgrants of amounts in excess of \$100,000.00 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1957 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR, 15), which prohibit the use under nonexempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. The provisions shall require reporting of violations to the grantor agency and the U.S. EPA Assistant Administrator for Enforcement (EN-329).

7. **Energy Efficiency**

All participants in the projects shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

8. **Changes**

The Grantee may, from time to time, request changes in the scope of the services of the Contracted Party to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contracted Party's compensation which are mutually agreed upon by and between the Grantee and the Contracted Party, shall be incorporated in written amendments to this Contract.

9. **Personnel**

The Contracted Party represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Grantee.

All the services required hereunder will be performed by the Contracted Party or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

10. **Anti-Kickback Rules**

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Engineer and contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under

this contract to insure compliance by the subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

**11. Withholding of Salaries**

If in the performance of this Contract, there is any underpayment of salaries by the Contracted Party or by any subcontracted thereunder, the Grantee shall withhold from the Contracted Party out of payment due to him an amount sufficient to pay to employees underpaid the difference between the salaries required thereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the Grantee for and on account of the contracted party or subcontractor to the respective employees to whom they are due.

**12. Claims and Disputes Pertaining to Salary Rates**

Claims and disputes pertaining to salary rates or to classifications of professional staff or technicians performing work under this Contract shall be promptly reported in writing by the Contracted Party to the Grantee for the latter's decision which shall be final with respect thereto.

**13. Equal Employment Opportunity**

During the performance of this Contract, the Contracted Party agrees to comply with Executive Order 11246, and the regulations issued pursuant thereto (24 CFR 130 and 41 CFR Chapter 60), which provides that no person shall be discriminated against on the basis of race, color, religion, gender, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts, contractors and subcontractors on Federal and Federally assisted construction contracts shall take affirmative action to ensure fair treatment in employments, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates or pay or other forms of compensation and selection for training apprenticeship.

**14. Anti-Discrimination Clauses**

The Contracted Party will comply with the following clauses:

1. Title VI of the Civil Rights Act of 1964 (PL 88-352), and the regulations issued pursuant thereto (24 CFR 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;
2. Title VIII of the Civil Rights Act of 1968 (PL 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and taking action to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services; and,
3. Executive Order 11063, as amended by Executive Order 12259, on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with Federal assistance Section 109 of the Housing and Community Development Act of 1974, as amended which requires that no person in the United States shall on the grounds of race, color, national origin, or gender be excluded from participation in, be denied the benefits or be subjected to discrimination under, any program

or activities funded in whole or in part with community development funds made available pursuant to the Act. Section 109 further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 796) shall also apply to any such program or activity.

**15. Section 3 Clause**

The Contracted Party will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 17010) requiring that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project area be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

**Section 3 Definition** - Section 3 residents are defined as 1) residents of public housing; or 2) individuals that reside in the metropolitan County in which the Section 3 covered assistance is expended and meet the definition of a low- or very low-income person as defined by HUD.

Section 3 business concerns are defined as one of the following: 1) businesses that are 51 percent or more owned by Section 3 residents; 2) businesses whose permanent full-time employees include persons, at least 30 percent of whom are current Section 3 residents or were Section 3 residents within 3 years of the date of first employment with the business concern; or 3) businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in the two previous categories.

**16. Discrimination Because of Certain Labor Matters**

No person employed on the work covered by this Contract shall be discharged or in any way discriminated against because he has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable hereunder to his employer.

**17. Compliance with Local Laws**

The Contracted Party shall comply with all applicable laws, ordinances, and codes of the state and local governments, and shall commit no trespass on any public or private property in performing any of the work embraced by this Contract.

**18. Subcontracting**

None of the services covered by this Contract shall be subcontracted without prior written consent of the Grantee. The Contracted Party shall be as fully responsible to the Grantee for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by him. The Contracted Party shall insert in each subcontract appropriate provisions requiring compliance with the labor standards provisions of this Contract.

**19. Assignability**

The Contracted Party shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Grantee provided that claims for money due or to become due the Contracted Party from the Grantee under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

**20. Interest of Members of Local Public Agency and Others**

The Contracted Party agrees to establish safeguards to prohibit employees from using positions for a purpose that is or give the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have a family, business, or other tie.

The Contracted Party will comply with Section 25-4-105, Mississippi Code Annotated (1972), which prohibits any public servant from using his official position to obtain pecuniary benefits for himself other than compensation provided for by law or for any relative or business with which he is associated and which further provides that a public servant may not be interested, during the term for which he has been chosen, or within one (1) year thereafter, in any contract made or let by the governing authorities of such municipality for the construction or doing of any public work, or for the sale or purchase of any materials, supplies or property of any description, or for any other purpose whatsoever, or in any subcontract arising therefrom or connected therewith, or to receive, either directly or indirectly, any portion or share of any money or other thing paid for the construction or doing of any public work, or for the sale or purchase of any property, or upon any other contract made by the governing authorities of the municipality, or subcontract arising therefore or connected therewith.

The Contracted Party will also be aware of and avoid any violation of Sections 25-4-117 and 25-4-119, Mississippi Code Annotated (1972), which prescribes a criminal penalty for any public servant convicted of a violation of this Ethics in Government section.

**21. Interest of Certain Federal Officers**

No member of or delegate to the Congress of the United States and no Resident Commissioner, shall be admitted any share or part of this Contract or to any benefit to arise therefrom.

**22. Interest of Contractor**

The Contracted Party covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contracted Party further covenants that in the performance of this Contract no person having any such interest shall be employed.

**23. Political Activity**

The Contracted Party will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

**24. Davis-Bacon Act Requirements**

The Contracted Party will comply with Section 110 of the Housing and Community Development Act of 1974, as amended, which requires that all laborers and mechanics employed by contractors or subcontractors on construction work assisted under the Act shall be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended 40 U.S.C. 276a-276-a5), and it will comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.). However, these requirements apply to the rehabilitation of residential property only if such property is designed for residential use of eight or more families.

**25. Uniform Act Requirements**

The Contracted Party will comply with all applicable requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) as specified in

regulations issued by the Secretary of the Department of Housing and Urban Development and published in 24 CFR 570-1.

**26. Lead-Based Paint Requirements**

The Contracted Party will comply with Title IV of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831), which prohibits the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance in any form.

**27. Compliance with Office of Management and Budget**

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-95, A-102, and A-54, as they relate to the use of Federal funds under this contract.

**28. Flood Insurance Purchase Requirements**

Both parties agree to comply with the flood insurance purchase requirements of Section 102(2) of the Flood Disaster Protection Act of 1973, (PL 93-234, 87 Stat. 975) approved December 31, 1976. Section 102 (a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase, "Federal financial assistance," includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

**29. Historic Preservation**

Both parties agree to assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1966 (16 USC 469a-I *et seq.*) by (a) consulting with the State Historic Preservation officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (CFR Part 600.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency and the state grantor agency to avoid or mitigate adverse effects upon such properties.

**30. Program Monitoring**

Both parties agree to assist and cooperate with the Federal grantor agency and the state grantor agency or their duly designated representatives in the monitoring of the project or projects to which this grant relates, and to provide in form and manner approved by the state grantor agency such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

**31. Procurement**

The subgrantee must comply with all State and Federal laws dealing with purchasing and acquisition of goods, services and other allowable cost as specified in the application.

**32. Discrimination Due to Beliefs**

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

33. **Confidential Findings**

All of the reports, information, data, etc., prepared or assembled by the Contracted Party under this Contract are confidential, and the Contracted Party agrees that they shall not be made available to any individual or organization without prior written approval of the Grantee.

34. **Third-Party Contracts**

The Grantee shall include in all contracts with Participating Parties receiving grant funds provisions requiring the following:

1. Each such Participating Party keeps and maintains books, records, and other documents relating directly to the receipt and disbursement of such grant funds; and,
2. Any duly authorized representative of the Mississippi Development Authority, the U.S. Department of Housing and Urban Development, and the Comptroller General of the United States shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of such Participating Party until the completion of all close-out procedures respecting this grant and the final settlement and conclusion of all issues arising out of this grant.

The Grantee shall include in all contracts with Participating Parties a provision that each Participating Party agrees that any duly authorized representative of the Mississippi Development Authority, the U.S. Department of Housing and Urban Development, and the Comptroller General of the United States shall, at all reasonable times, have access to any portion of the Project in which such Participating Party is involved until the completion of all close-out procedures respecting this grant.

35. **Excessive Force**

The contracted parties will adopt and enforce a policy of prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

36. **Architectural Barriers Act and Americans with Disabilities**

The contracted parties will comply with the Architectural Barriers Act and the Americans with Disabilities as described in 24 CFR Sec 487 (e).

Agenda Item 2014-3268

# City of Diamondhead



5000 Diamondhead Circle, Diamondhead, MS 39525-3260  
Phone: (228) 222.4626  
FAX: (228) 222.4390  
[www.diamondhead.ms.gov](http://www.diamondhead.ms.gov)

December 10, 2014

Mayor City Council  
5000 Diamondhead Circle  
Diamondhead, MS 39525

Dear Mayor and Councilmembers:

This is a request to consider committing up to \$10,000.00 as a 20% match to receive up to \$40,000.00 in funding from Gulf Regional Planning Commission for a Surface Transportation and Connectivity Study.

The study will serve the community well in the areas of long range planning and feasibility in addition to substantiating requests for various grant funds from local, state, and federal sources.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Clovis Reed", is written over the typed name.

Clovis Reed  
City Manager

## AGREEMENT

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ between THE CITY OF DIAMONDHEAD, MS, (hereinafter "CITY") and LEVANWAY & ASSOCIATES, PLLC, (hereinafter "LEVANWAY").

WHEREAS LEVANWAY is a lobbyist with expertise in the area of governmental affairs,

WHEREAS, CITY wishes to avail itself of LEVANWAY's expertise and advice during the term of this Agreement; and LEVANWAY is willing to offer its expertise and advice to the CITY, under the terms and conditions as stated herein;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, and intending to be legally bound, the parties agree as follows:

### **1. INDEPENDENT CONTRACTOR.**

Both the CITY and LEVANWAY agree that LEVANWAY will act as an independent contractor in the performance of its duties under this contract.

The parties agree that nothing herein contained shall be construed or interpreted to mean that the CITY is an employer. Any provision herein, which is now or later declared inconsistent with such Agreement, shall be null and void.

**2. SCOPE OF SERVICES.** All of those activities normally associated with a comprehensive and effective government relations effort. Included are strategy development, drafting of legislation and proposals, direct contacts with agencies and the Legislature and any and all other necessary activities. Covered entities specifically included, but not limited are:

- a. The MS Legislature;
- b. Issues related to economic development opportunities;
- c. Mississippi Department of Environmental Quality (MDEQ);
- d. Mississippi Development Authority (MDA) and
- e. Mississippi Department of Transportation (MDOT).
- f. Specifically excluded are issues related to gaming and the Mississippi Gaming Commission.

**3. FEES.** A base fee of \$33,000.00 to LEVANWAY for a contract period of one calendar year with an option to renew for one additional year. There shall be an annual review of scope service and appropriateness of the fee. The fee will be invoiced at the beginning of each month beginning January 1, 2015, in an amount of \$3,000 or one-eleventh of the annual total.

**4. TERM.** A term of 12 months, beginning December 1, 2014 and terminating November 30, 2015.

**5. REIMBURSABLE EXPENSES.** Reasonable expenses shall be preauthorized not to exceed One Thousand Five Hundred Dollars (\$1,500.00) and shall include reasonable entertainment expenses (travel, lodging and entertainment expenses) associated with the fulfillment of the obligations contracted herein and having written approval of the City Manager. LEVANWAY'S routine office expenses, such as copies, long distance fees, fax charges and in-state mileage, are included in the base-consulting fee. The CITY shall not be responsible for any lodging expenses in the City of Jackson. Previously approved extraordinary travel and lodging expenses authorized by the CITY are reimbursable. LEVANWAY will invoice all reimbursable expenses with copies of receipts attached.

**6. Reporting.** LEVANWAY shall provide the CITY written reports, at a minimum weekly, during the legislative session. Monthly written reports will be provided out of session providing information on activities performed on behalf of CITY. Additional information will be provided timely through the CITY's primary point of contact, the City Manager (or if unavailable the Mayor). The City Manager shall be responsible for gathering request for information from the City Council to present to LEVANWAY.

**7. TERMINATION.**

- a. This Agreement may be terminated by either party as follows:
  - (1) In the event that the other party has breached a material covenant or obligation under this Agreement and such breach remains uncured for a period of thirty (30) days after written notice has been sent by the non-Breaching party; or
  - (2) In the event that the other party ceases to conduct business; or
  - (3) At the discretion, with or without cause, of either party by giving sixty (60) days advance written notice to the other party.
- b. If the CITY terminates this Agreement pursuant to Section 7 (a)(3) of this agreement, the balance of the base fee owed LEVANWAY shall become due and payable to LEVANWAY.

**8. NOTICE.** Any written notice, required by the provisions of this Agreement shall be sent by Certified mail, return receipt requested.

The following is provided:

**The City of Diamondhead, MS**  
5000 Diamondhead Circle  
Diamondhead, MS 39525  
Attn: Mr. Clovis Reed  
Phone: 773-399-8424  
E-Mail: creed@diamondhead.ms.gov

**Levanway & Associates, PLLC**  
949 Morningside Street, Suite F-13  
Jackson, MS 39202  
Attn: Mr. Scott Levanway  
Phone: 228-860-6060  
E-Mail: scott@levanway.com

**9. GENERAL**

- a. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties and supersedes all prior Agreements, negotiations and discussions. It shall not be amended or changed except in writing and executed by both parties.
- b. **Modification.** Only a written instrument executed by the authorized representative of both parties may modify this Agreement.
- c. **Choice of Law.** The laws of the State of Mississippi shall govern this Agreement.
- d. **Invalidity.** If any portion of this Agreement is held invalid, it is agreed that such invalidity shall not affect any of the remaining portions.

In witness whereof the parties hereto have caused this Agreement to be executed by their duly authorized representatives and is effective as of the date first written above

**The City of Diamondhead, MS**

**Levanway & Associates, PLLC**

By: \_\_\_\_\_  
Clovis Reed  
City Manager

By: \_\_\_\_\_  
Scott Levanway  
Member

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

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