

**CITY OF DIAMONDHEAD, MISSISSIPPI
RIGHT OF ENTRY
TO PERFORM WORK**

The undersigned, Governing Body of the City of Diamondhead (hereafter "the Owner"), the owner of property throughout the City of Diamondhead including, right-of-ways, common ground, neutral ground, buildings and improvements (hereafter "the Property"), located in Diamondhead, Mississippi 39525, hereby grants permission to Keep Diamondhead Beautiful, Inc. (hereafter "KDB"), and its' Contractor(s); employees; and, volunteers to enter onto the Property to perform beautification services to the Property to include planting and maintenance of plant materials. KDB represents and agrees that, immediately following the work performed that KDB, through its' Contractor(s); employees; and, volunteers, will remove from the property all debris, surplus materials and construction equipment used and leave the Property in the condition in which it was prior to the planting and maintenance and improvements, except for reasonable wear and tear.

KDB represents to the Owner that KDB has in place, and will continue to maintain personal injury and property liability insurance, workers' compensation insurance, medical benefits insurance and/or other insurance, as required and sufficient to cover any personal injuries or property damages or other loss of any type and description that may occur to any person(s) or any property as a result of the right of entry to perform work on the Property and/or the performance of any work on the Property.

KDB does hereby irrevocably and unconditionally agree to hold harmless, defend, and indemnify The City and its parent, subsidiaries, affiliates, successors, and its and their past, present, or future directors, officers, employees, representatives, shareholders, agents, counsel, fiduciaries, and its' or their respective heirs, executors, successors, assigns, or administrators, from and against any and all claims, demands, damages, liens, losses, expenses, legal fees, actions or causes of action, lawsuits and/or appeals, of any kind and character which may arise as a result of or relating to the right to perform work on the Property and/or the performance of work on the Property.

Entire Agreement. This Agreement supersedes all prior agreements and oral

discussions and constitutes the entire agreement between the parties as to the matters contained herein and the Agreement shall not be modified in any respect except by an amendment in writing signed by all parties hereto.

Representation as to Authority to Act. The undersigned represent and warrant that they are duly empowered and authorized to execute this Agreement on behalf of their respective principals.

IN WITNESS WHEREOF the parties have caused this instrument to be executed as of the ___ of _____, 2016.

CITY OF DIAMONDHEAD

By: _____
Its: _____
Address:

Email:
Office Telephone:

KEEP DIAMONDHEAD BEAUTIFUL, INC.

By: _____
Its: _____
Address:

Email:
Office Telephone:

Agenda Item 2017-035



5000 Diamondhead Circle • Diamondhead, MS 39525-3260
Phone: 228.222.4626 Fax: 228.222.4390
www.diamondhead.ms.gov

November 8, 2016

Mayor and Council
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525

Dear Councilmembers:

RE: Payment to MSED, LLC for Professional Services – East Aloha Access Road Project SM-15-709

Attached you will find Invoice 1621-01 from MSED, LLC in the amount of \$820.50 for professional engineering services in relation to East Aloha Access Road. This invoice is for the period October 25 - 31, 2016.

If you find this document to be in order, please proceed with payment approval.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Reed', is written over the printed name and title of the signatory.

Clovis Reed
City Manager

Attachment

CR:jk

MONTHLY INVOICE

Client Name: City of Diamondhead Date: 11/02/16
 Address: 5000 Diamondhead Circle
 Diamondhead, MS 39525
 Attn: Clovis Reed, City Manager

Project Name: **Diamondhead East Aloha Drive Access Road**
 COD Project No.: 16-070.02 MSED Project No.: 2404.0043.1621
 Work Assignment No.: 00-04.2016 Invoice No.: 1621-01

Period of Service: From: 10/25/16 To: 10/31/16

DESCRIPTION	CURRENT PERIOD FEES	PREVIOUS COSTS	TOTAL INVOICED TO DATE
Project Engineer	\$ 75.00	\$ -	\$ -
Resident Project Representative	\$ 595.00	\$ -	\$ -
Clerical	\$ 150.50	\$ -	\$ -
Project Totals	\$ 820.50	\$ -	\$ -

TOTAL AMOUNT PAYABLE THIS INVOICE \$ 820.50

Not to Exceed: \$8,000.00 Percent Complete: 10%

For billing inquiries, contact:
 Karen Sites @ 228.265.4726 or ksites@msedllc.com

THANK YOU FOR YOUR BUSINESS

SUPPORTING DATA

Project Name: **Diamondhead East Aloha Drive Access Road**

COD Project No.: 16-070.02 MSED Project No.: 2404.0043.1621

Work Assignment No. 00-04.2016 Invoice No.: 1621-01

Period of Service: From: 10/25/16 To: 10/31/16

DESCRIPTION	RATE OF PAY	CURRENT PERIOD HOURS	CURRENT PERIOD COSTS
Project Engineer	\$ 75.00	1.0	\$ 75.00
Resident Project Representative	\$ 70.00	8.5	\$ 595.00
Clerical	\$ 43.00	3.5	\$ 150.50
Project Totals		13.0	\$ 820.50

PROJECT MONTHLY TIME SUMMARY

Project Engineer

DATE	EMPLOYEE NAME	DESCRIPTION	HOURS
10/25/16	Karen Sites	Project Site Visit	1.0
Monthly Totals			1.0

Resident Project Representative

DATE	EMPLOYEE NAME	DESCRIPTION	HOURS
10/25/16	Chuck Sites	Construction Management	1.0
10/26/16	Chuck Sites	Construction Management	2.0
10/27/16	Chuck Sites	Construction Management	1.0
10/28/16	Chuck Sites	Construction Management	2.5
10/31/16	Chuck Sites	Construction Management	2.0
Monthly Totals			8.5

Clerical

DATE	EMPLOYEE NAME	DESCRIPTION	HOURS
10/26/16	Wendy Hatchett	Copying Bid Docs	3.0
10/29/16	Wendy Hatchett	Administration	0.5
Monthly Totals			3.5

Agenda Item 2017-036



5000 Diamondhead Circle • Diamondhead, MS 39525-3260
Phone: 228.222.4626 Fax: 228.222.4390
www.diamondhead.ms.gov

November 8, 2016

Mayor and Council
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525

Dear Councilmembers:

RE: Payment#3 to Twin L. Construction – East Aloha Access Road Project SM-15-709

Attached you will find Pay Application #3 from Twin L. Construction in the amount of \$63,306.76 for East Aloha Access Road construction.

If you find this document to be in order, please proceed with payment approval.

Sincerely,

A handwritten signature in black ink that reads 'Clovis Reed'. The signature is fluid and cursive, with the first name 'Clovis' and last name 'Reed' clearly distinguishable.

Clovis Reed
City Manager

Attachment

CR:jk

November 4, 2016

City of Diamondhead
Clovis Reed, City Manager
5000 Diamondhead Drive Circle
Diamondhead, MS 39525

**Re: East Aloha Access Road
Twin L Construction Pay Request # 3
Project No.: SM-15-709**

Dear Mr. Reed:

Enclosed are three copies of Twin L Construction's Pay Request # 3 for the work performed on the East Aloha Access Road Project. This invoice is for all work completed and stored through November 3, 2016, less the 5% retainage. Also, enclosed is one copy of the daily inspection reports for your records. We recommend that you pay Twin L Construction the amount of \$63,306.76

Please review at your convenience and contact me if you have comments or need additional information.

Sincerely,



Karen J. Sites, PE, CPESC
President

CONTINUATION SHEET

APPLICATION AND CERTIFICATE FOR PAYMENT, containing

Contractors signed Certification is attached

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NUMBER: 3

APPLICATION DATE: 10/31/16

PERIOD TO: 10/31/16

CITY'S PROJECT NO:

A	B1	B2	B3	B4	C	D1	D2	D3	E1	E2	E3	F	G		H	I	
ITEM NO.	DESCRIPTION OF WORK	QTY	UNIT	UNIT PRICE	TOTAL WORK IN UNITS				TOTAL WORK VALUE			MATERIALS PRESENTLY STORED IN E1 OR	TOTAL COMPLETED AND STORED TO DATE (E3+F)	BALANCE TO FINISH - UNIT	BALANCE TO FINISH - VALUE	RETAINAGE IF APPL.	
					SCHEDULED VALUE	COMPLETED PREVIOUS	COMPLETED THIS PERIOD	COMPLETED TO DATE (D1+D2)	COMPLETED PREVIOUS	COMPLETED THIS PERIOD	COMPLETED TO DATE (E1+E2)						% (G/C)
1	MOBILIZATION	1	LS	\$ 5,000.00	\$ 5,000.00	1		1	\$ 5,000.00	\$ -	\$ 5,000.00	\$ -	\$ 5,000.00	100%	0.00	\$ -	\$ 250.00
2	SURVEYING	1	LS	\$ 18,000.00	\$ 18,000.00	0.73	0.16	0.89	\$ 13,140.00	\$ 2,880.00	\$ 16,020.00		\$ 16,020.00	89%	0.11	\$ 1,980.00	\$ 801.00
3	TRAFFIC CONTROL	1	LS	\$ 16,000.00	\$ 16,000.00	0.75	0.125	0.875	\$ 12,000.00	\$ 2,000.00	\$ 14,000.00		\$ 14,000.00	88%	0.13	\$ 2,000.00	\$ 700.00
4	SITE CLEARING	1	LS	\$ 30,000.00	\$ 30,000.00	0.99	0.01	1	\$ 29,700.00	\$ 300.00	\$ 30,000.00		\$ 30,000.00	100%	0.00	\$ -	\$ 1,500.00
5	EROSION CONTROL	1	LS	\$ 8,500.00	\$ 8,500.00	0.73	0.25	0.98	\$ 6,205.00	\$ 2,125.00	\$ 8,330.00		\$ 8,330.00	98%	0.02	\$ 170.00	\$ 416.50
6	22 X 13 RACP	1	LS	\$ 5,000.00	\$ 5,000.00	1		1	\$ 5,000.00	\$ -	\$ 5,000.00		\$ 5,000.00	100%	0.00	\$ -	\$ 250.00
7	22 X 13 FLARED END SEC.	1	LS	\$ 8,000.00	\$ 8,000.00	1		1	\$ 8,000.00	\$ -	\$ 8,000.00		\$ 8,000.00	100%	0.00	\$ -	\$ 400.00
8	44 X 27 RACP	1	LS	\$ 14,000.00	\$ 14,000.00	1		1	\$ 14,000.00	\$ -	\$ 14,000.00		\$ 14,000.00	100%	0.00	\$ -	\$ 700.00
9	44 X 27 SNG HEADWALL	1	LS	\$ 10,000.00	\$ 10,000.00	1		1	\$ 10,000.00	\$ -	\$ 10,000.00		\$ 10,000.00	100%	0.00	\$ -	\$ 500.00
10	CATCH BASIN	1	LS	\$ 6,000.00	\$ 6,000.00			0	\$ -	\$ -	\$ -		\$ -	0%	1.00	\$ 6,000.00	\$ -
11	SUB-BASE & BASE	1	LS	\$ 30,000.00	\$ 30,000.00	0.62	0.28	0.9	\$ 18,600.00	\$ 8,400.00	\$ 27,000.00		\$ 27,000.00	90%	0.10	\$ 3,000.00	\$ 1,350.00
12	LIMESTONE	1	LS	\$ 45,700.00	\$ 45,700.00		0.9	0.9	\$ 41,130.00	\$ 41,130.00	\$ 41,130.00		\$ 41,130.00	90%	0.10	\$ 4,570.00	\$ 2,056.50
13	2" ASPHALT BASE	1	LS	\$ 34,150.00	\$ 34,150.00			0	\$ -	\$ -	\$ -		\$ -	0%	1.00	\$ 34,150.00	\$ -
14	2" ASPHALT SURFACE	1	LS	\$ 34,150.00	\$ 34,150.00			0	\$ -	\$ -	\$ -		\$ -	0%	1.00	\$ 34,150.00	\$ -
15	ROAD STRIPING & SIGNAGE	1	LS	\$ 18,000.00	\$ 18,000.00			0	\$ -	\$ -	\$ -		\$ -	0%	1.00	\$ 18,000.00	\$ -
16	CONSTRUCTION ALLOWENCE	1	LS	\$ 10,000.00	\$ 10,000.00		0.98037	0.98037	\$ 9,803.70	\$ 9,803.70	\$ 9,803.70		\$ 9,803.70	98%		\$ 196.30	\$ 490.19
	TOTALS				\$ 292,500.00				\$ 121,645.00	\$ 66,638.70	\$ 188,283.70	\$ -	\$ 188,283.70			\$ 104,216.30	\$ 9,414.19

Agenda Item 2017-0311



5000 Diamondhead Circle - Diamondhead, MS 39525-3260

Phone: 228.222.4626 Fax: 228-222-4390

TO: Mayor, City Council and City Manager

FROM: Ronald R. Jones, CBO
Building Official

Ronald R. Jones CR

DATE: November 7, 2016

SUBJECT: Recommendations to Award Bids for Lot Clean-up and Demolition

The City received bids on 11-3-16 at 10:00 a.m. for the following:

- RFB# 2016-1062; Property address 88372 Diamondhead Drive East;
- RFB# 2016-1063; Property address 74609 Diamondhead Drive North

The amount of the bids received by contractor were:

	Morreale Construction	Mid South Utility Contractors
RFB 2016-1062	\$1,200	\$6,904
RFB 2016-1063	\$2,000	\$17,373.70

The City received 2 bids each for each property, my recommendation is to accept both bids from Morreale Construction for the amounts specified. The actual bids submitted by each contractor by property are attached. Upon the issuance of a notice to proceed, the contractor will have 30 days to complete the work.

If you have any questions, please advise.

Attachments (4)

RFB/RFP # 2016-1062

DUE: 11-3-16; 10:00 A.M.

Bid/Proposal
RECEIPTS
City of Diamondhead, MS
FOR:
88372 Diamondhead Drive East

FROM	Time/Date Rec'd	Amount
1. <i>Moreale Construction</i>	<i>11-3-16</i> <i>8:50 AM</i>	<i>1,200</i>
2. <i>Mid South Utility Contractors</i>	<i>11-3-16</i> <i>9:00 A.M.</i>	<i>6,904</i>
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Verified By: *Ronald R. Jones* Date: *11-3-16*

Witnessed By: *J. H. [Signature]* Date: *11-3-16*

Agenda Item 2017-039



5000 Diamondhead Circle • Diamondhead, MS 39525-3260
Phone: 228.222.4626 Fax: 228.222.4390
www.diamondhead.ms.gov

November 8, 2016

Mayor and Council
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525

Dear Councilmembers:

RE: Memorandum of Understanding with MDOT – Interstate Lighting (STP-0010-00(024)LPA/107477

Attached you will find the Memorandum of Understanding from Mississippi Department of Transportation with regard to the Interstate Lighting Project STP 0010-00(024). Your acceptance and approval of the document is hereby requested along with authorization to be executed by the City Manager.

If you find this document to be in order, please proceed acceptance and approval.

Sincerely,

A handwritten signature in black ink that reads 'Clovis Reed'. The signature is written in a cursive style with a large, looping 'C' at the beginning.

Clovis Reed
City Manager

Attachment

CR:jk

Melinda L. McGrath
Executive Director

P. O. Box 1850
Jackson, MS 39215-1850
Telephone (601) 359-7001
FAX (601) 359-7110
GoMDOT.com



Mark C. McConnell
Deputy Executive Director/Chief Engineer
Lisa M. Hancock
Deputy Executive Director/Administration
Willie Huff
Director, Office of Enforcement
Charles R. Carr
Director, Office of Intermodal Planning

16499-B Highway 49, Saucier, Mississippi 39574-9740
November 2, 2015

Mr. Clovis Reed
City Manager
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525

RE: Memorandum of Understanding, MOU
Interstate Lighting – STP-0010-00(024)LPA / 107477

Dear Mr. Reed,

Attached are the duplicate copies of the Memorandum of Understanding, MOU, for the above referenced project for your review and processing. Please execute the MOU in duplicate and return with governing council or board minutes signifying approval. Please mail to:

Mississippi Department of Transportation
Attn: David Seyfarth
16499-B Highway 49
Saucier, MS 39574-9740

In accordance with the MOU, please remember to include the MDOT in any public relations activities or press release for this project. The MDOT public relations liaison for District VI is Layla Essary, telephone number 601-466-1881. Should you need additional information, contact my office at 228-832-0682.

Sincerely,

A handwritten signature in black ink that reads "Chuck Starita".

Chuck Starita, PE
Asst. District 6 LPA Engineer

cc: Project File 16-10 w/ attachments

Memorandum of Understanding

STP-0010-00(024)LPA / 107477-701000
Interstate 10 Lighting
Diamondhead, MS

This Agreement is made between the Mississippi Transportation Commission, a body Corporate of the State of Mississippi (hereinafter referred to as the "COMMISSION"), acting by and through the duly authorized Executive Director of the Mississippi Department of Transportation ("MDOT") and City of Diamondhead, "LPA" (hereinafter referred to as the "LPA"), for the purpose of establishing the conditions under which the LPA may utilize STP Funds and to specify acts required to complete the proposed project as described below, effective as of the date of the last execution by the Commission.

WHEREAS, the LPA has announced its intentions to install interchange lighting; (hereinafter referred to as the "PROJECT"), and the COMMISSION is hereby consenting to allow the LPA to manage the PROJECT under the terms and provisions of this Memorandum of Understanding; and

WHEREAS, it is anticipated that approximately \$400,000.00 in federal funds (80% federal match and 20% local match) are available for the construction of the PROJECT, and the above mentioned federal funds will expire if they are not obligated on or before N/A. The above funds are subject to normal reductions and obligational limitations; and

WHEREAS, the LPA will be responsible for all PROJECT cost over and above the maximum amount of Federal Funds allocated to the PROJECT by the COMMISSION, and the MDOT requires the LPA to provide the local share (local match) previously stated; and

WHEREAS, the COMMISSION and the LPA desire to set forth more fully the understanding of the parties with respect to the process by which this will be accomplished, and this document supersedes all other agreements related to the above-described PROJECT unless herein specified.

NOW, THEREFORE, for and in consideration of the premises and agreements of the parties as hereinafter contained, the LPA and the COMMISSION enter into this Memorandum of Understanding for these and any future federal funds that may be allocated to this PROJECT, and agree and covenant as follows:

ARTICLE I. DUTIES AND RESPONSIBILITIES

A. The LPA, which is hereby designated as the Local Sponsor for the purposes herein, hereby contracts, covenants and binds itself to the following responsibilities, duties, terms and conditions:

1. The LPA shall immediately designate a full time employee of the LPA as the Project Director, who will serve as the person of responsible charge for the PROJECT and will coordinate all PROJECT activities with the MDOT District LPA Coordinator.

2. The LPA shall follow the procedures set out in the latest online version of the Project Development Manual (PDM) for Local Public Agencies that are necessary for the

PROJECT including, but not limited to, project activation, consultant selection, request and/or develop and follow all necessary permits, environmental process, preliminary design, Right of Way acquisition, advertisement for and selection of a contractor, construction oversight, and project close out.

3. The LPA shall submit to the MDOT four (4) complete sets of "as-built" plans in printed form and the original electronic files in a format that is compatible with Microstation prior to MDOT acceptance. Upon request, MDOT may waive this requirement for selected projects.

4. The LPA shall be responsible for all maintenance and operation of the PROJECT during and after completion so that the federal investment in the PROJECT is preserved. If maintenance is not performed, as appropriate, future federal funds may be withheld for any projects in the jurisdiction of the local agency, or the Commission may seek recovery of project funds through all available legal actions.

5. The LPA shall follow and abide by any and all federal requirements, specifically, but not limited to, the provisions that no retainage shall be withheld from installment payments to the construction contractor.

6. The LPA agrees that if any act of omission or commission on the part of the LPA causes loss of Federal funding from FHWA or any other source, or any penalty being imposed by the United States of America under the Clean Water Act, 33 U.S.C. § 1251, et seq. or any other provision of law, the LPA will be solely responsible for all additional costs.

7. In compliance with State Law, the LPA shall pay all payments owed to Contractors and Consultants according to the terms of the contract, and in all instances payments shall be made within forty-five (45) days from the day they were due and payable. MDOT reserves the right to withhold Federal reimbursement until adequate proof of payment has been produced by the LPA.

Excepted from this requirement are payments to railroads for any work included in the PROJECT. Payments to railroads, their consultants or contractors, for work included in the PROJECT, may be made by MDOT, in its sole discretion. Payments made by MDOT to railroads, their consultants or contractors shall come from the funds obligated for the PROJECT.

8. The LPA shall be solely responsible for payment of any and all funds required to complete the PROJECT, over and above the available federal aid funds for the PROJECT.

9. All contracts and subcontracts shall include a provision for compliance with Senate Bill 2988 from the 2008 Session of the Mississippi Legislature entitled "The Mississippi Employment Protection Act," as published in the General Laws of 2008 and codified in the Mississippi Code of 1972, as amended (Sections 71-11-1 and 71-11-3), and any rules or regulations promulgated by the COMMISSION, the Department of Employment Security, the State Tax Commission, the Secretary of State, or the Department of Human Services in accordance with the Mississippi Administrative Procedures Law (Section 25-43-1, et seq., Mississippi Code of 1972, as amended) regarding compliance with the Act. Under this Act, the LPA and every sub-recipient or subcontractor shall register with and participate in a federal work authorization program operated by the United States

Department of Homeland Security to electronically verify information of newly hired employees pursuant to the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Public Law 104-208., Division C, Section 403(a); 8 USC, Section 1324a.

10. The LPA will be required to acknowledge MDOT and FHWA in all public relations efforts for a project including press releases; materials for groundbreaking, ribbon cuttings or other public events; and any other public information or media resources by notifying the MDOT Public Affairs Division, 601-359-7074, comments@mdot.ms.gov. At a minimum, the following example sentence should be included:

"This project was funded by the Mississippi Department of Transportation and the Federal Highway Administration."

When appropriate, an invitation should be extended to MDOT Public Affairs for the Transportation Commissioner, MDOT Executive Director or other designee to speak at any official public ceremony for this project.

11. In the event right-of-way acquisition for, or actual construction of, the road for which this preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the fiscal year in which this preliminary engineering project is obligated, the LPA may be required to repay to the MDOT the sum or sums of Federal funds reimbursed to the LPA for this preliminary engineering work; and (2) in the event that right-of-way acquisition is started by the close of the tenth federal fiscal year, but construction is not started by the close of the twentieth federal fiscal year following the fiscal year in which this preliminary engineering project is obligated, the LPA may be required to repay to the MDOT the sum or sums of Federal funds reimbursed to the City for this preliminary engineering work and right-of-way acquisition.

12. The LPA will be required to submit to the District LPA Coordinator monthly progress reports through the Notice to Proceed for construction, which shall include, but not be limited to, the work which has been completed that month and the planned work for the upcoming month. The LPA will also provide a project progress schedule which will report project milestones and the target date for the LPA's request for Ad Authority. These project milestones are to be updated once any milestones are missed.

13. The LPA agrees to maintain, and make available to Commission, a sufficient accounting system with proper internal controls and safeguards. The accounting system and its controls should at all times maintain adequate recording and reporting of federal funds received by the LPA. If sufficient internal controls over the LPA's federal funding are not maintained, federal funds may be withheld and future transportation projects will not be considered.

14. The LPA agrees that any planning studies prepared or produced, as part of, or in conjunction with, this project, shall in no way obligate the Commission to any other terms or conditions other than those stated herein.

15. The LPA, being classified as a lower tier participant in federal funding, certifies, by execution of this agreement, that neither it nor those individuals or entities with which it contracts are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

B. THE COMMISSION WILL:

1. Allow the LPA to design and construct the proposed transportation improvements provided that the design meets with MTC and FHWA approval and that all costs of the improvements that are not covered by federal funds are borne by the LPA.
2. Enter into cooperative agreements or permits necessary to allow the LPA access to the property of the COMMISSION for the purposes of constructing the proposed transportation improvements.
3. Work with the LPA, through the District LPA Coordinator, during the various phases of the work with the goal of producing a project that will be acceptable to the COMMISSION upon completion.
4. Review all submittals in a timely manner, in accordance with the PDM, to allow the project to progress in an orderly fashion.
5. During the progress of the PROJECT, assist the LPA in obtaining reimbursements of federal funding for any phase that is eligible for reimbursement. All costs associated with this process, and any other involvement by the MDOT staff in this PROJECT, may be charged as a project cost.
6. Submit all documents to the Federal Highway Administration (FHWA) when required or requested by the FHWA.
7. In its discretion, make payments to railroad companies, their consultants or contractors for work on railroads included in the PROJECT. The payments made shall come from project funds obligated for the PROJECT.

ARTICLE II. GENERAL PROVISIONS

- A. Should the LPA fail to complete the construction of the proposed transportation improvements as contemplated by this agreement after construction is commenced, the LPA agrees that it will bear all costs of completion over and above the funds supplied by the FHWA through MDOT. The COMMISSION shall have the right to audit all accounts associated with the PROJECT, and should there be any overpayment by the COMMISSION to the LPA, the LPA agrees to refund any such overpayment within 30 days of written notification. Should the LPA fail to reimburse the COMMISSION, the COMMISSION shall have the right to offset the amount due from any other funds in its possession that are due the LPA on this or any other project, current or future.
- B. This Memorandum of Understanding shall be subject to termination at any time upon thirty (30) days written notice by either party. Such notice shall not, however, cancel any contract made in reliance upon this agreement and underway at the time of termination. Any contract underway shall be allowed to conclude under its own terms. The LPA agrees to bear complete and total legal and financial responsibility for any such agreement. Additionally, funds may be suspended/terminated under the provisions of Section F.
- C. It is understood that this is a Memorandum of Understanding and that more specific

requirements for the conduct of the design of the transportation improvement project are contained in the Federal Statutes, the Code of Federal Regulations, the Mississippi Code, and the Standard Operating Procedures for MDOT, and other related regulatory authorities. The LPA agrees that it will abide by all such applicable authority.

D. Should the LPA miss the obligation deadline set in this MOU, MDOT reserves the right to obligate funds for the project as obligation authority becomes available, and may not authorize the obligation of those funds until after the obligation of other projects that are set to meet their individual deadlines

E. The Executive Director of MDOT may withhold federal funds for the PROJECT for any of the following reasons:

1. Failure to proceed with the work when so instructed by the MDOT or to adhere to the requirements of the contract.
2. Failure to perform the work with sufficient workmen, equipment and materials to assure completion within contract time.
3. Performing unacceptable work, or neglecting or refusing to remove materials or to perform any such work as may be rejected as unacceptable.
4. Discontinuing the prosecution of the work.
5. Failure to comply with all federal, state and local laws, ordinances, regulations, permits, and all orders and decrees of bodies or tribunal's having jurisdiction or authority which affect those engaged or employed on the work or affect the conduct of the work.
6. Becoming insolvent, being declared bankrupt or committing any act of bankruptcy or insolvency.
7. Allowing a final judgment to stand unsatisfied.
8. Making an assignment for the benefit of creditors.
9. Failure to deal with all storm water issues as defined in the permit and/or PDM.
10. Failure to properly maintain any project that uses federal funds may cause future federal funds to be withheld for any projects in the jurisdiction of the local agency.
11. Failure for any other cause whatsoever to carry on the work in an acceptable manner.

F. It is understood that obligation authority is uncertain and should MDOT or the MPO exceed its obligation authority for the year, the LPA understands that it be may be required to move the project to another fiscal year for the funds to be obligated.

Before federal Funds are terminated, the LPA will be notified in writing by the

Executive Director of the conditions which make termination of funds imminent. If no effective effort has been made by the LPA, its agents, employees, contractors or subcontractors, to correct the conditions of which complaint is made, within fifteen (15) calendar days after notice is given, the Executive Director may declare the Federal Funds suspended for the PROJECT and notify the LPA accordingly. The LPA will then have forty-five (45) days in which to correct all conditions of which complaint is made. If all conditions are not corrected within forty-five (45) days, the Executive Director may declare the federal funds for the PROJECT terminated and notify the LPA accordingly. If all conditions are corrected, within the forty-five (45) day period, the LPA will be reimbursed under the terms of this agreement, for all work satisfactorily completed during the forty-five days period.

G. In the event that circumstances call for MDOT to expend staff time and other resources to address issues on the PROJECT, then MDOT time may be charged to the PROJECT. Assessing charges to a project is within the sole discretion of MDOT. Any charges made will impact the amount of funds available to reimburse the LPA, and therefore the LPA's contribution to the PROJECT may increase.

ARTICLE III. NOTICE & DESIGNATED AGENTS

A. For purposes of implementing this section and all other sections of this Agreement with regard to notice, the following individuals are herewith designated as agents for the respective parties unless otherwise indentured in the addenda hereto:

For Contractual Administrative Matters:

COMMISSION:
Executive Director
MDOT
P.O. Box 1850
Jackson, MS 39215-1850
Phone: (601) 359-7002
Fax: (601) 359-7110

LPA:
Clovis Reed, City Manager
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525
Phone: (228) 222-4626
Fax: (228) 222-4390

For Technical Matters:

COMMISSION:
District LPA Coordinator – District 6
MDOT
16499-B Highway 49
Saucier, MS 39574
Phone: (228) 832-0682
Fax: (228) 832-0681

LPA:
Clovis Reed, City Manager
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525
Phone: (228) 222-4626

B. All notices given hereunder shall be by U.S. Certified Mail, return receipt requested, or by facsimile and shall be effective only upon receipt by the addressee at the above addresses or telephone numbers.

ARTICLE IV. RELATIONSHIP OF THE PARTIES

A. The relationship of the LPA to the COMMISSION is that of an independent contractor, and said LPA, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the COMMISSION by reason hereof. The LPA will not by reason hereof, make any claim, demand or application or for any right or privilege applicable to an officer or employee of the COMMISSION, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage, retirement membership or credit, or any form of tax withholding whatsoever.

B. The COMMISSION executes all directives and orders through the MDOT. The LPA executes all directives and orders pursuant to applicable law, policies, procedures and regulations. All notices, communications, and correspondence between the COMMISSION and the LPA shall be directed to the designated agent shown above in Article III.

ARTICLE V. RESPONSIBILITIES FOR CLAIMS AND LIABILITY

To the extent permitted by law, the Commission and the LPA agree that neither party nor their agents, employees, contractors or subcontractors, will be held liable for any claim, loss, damage, cost, charge or expenditure arising out of any negligent act, actions, neglect or omission caused solely by the other party, its agents, employees, contractors or subcontractors.

ARTICLE VI. MISCELLANEOUS

No modification of this Memorandum of Understanding shall be binding unless such modification shall be in writing and signed by all parties. If any provision of this Memorandum of Understanding shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Memorandum of Understanding is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK

ARTICLE VII. AUTHORITY TO CONTRACT

Both parties hereto represent that they have authority to enter into this Memorandum of Understanding.

This Agreement may be executed in one or more counterparts (facsimile transmission, email or otherwise), each of which shall be an original Agreement, and all of which shall together constitute but one Agreement.

So agreed this the _____ day of _____, 20__.

City of Diamondhead

Clovis Reed, City Manager

Attested:

(Appropriate clerk etc)

So agreed this the _____ day of _____, 20__.

MISSISSIPPI TRANSPORTATION COMMISSION
By and through the duly authorized
Executive Director

Melinda L. McGrath, PE
Executive Director
Mississippi Department of Transportation

Book _____, Page _____,

Agenda Item 2017-038



5000 Diamondhead Circle • Diamondhead, MS 39525-3260
Phone: 228.222.4626 Fax: 228.222.4390
www.diamondhead.ms.gov

November 8, 2016

Mayor and Council
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525

Dear Councilmembers:

RE: Memorandum of Understanding with MDOT – Gulf Club Drive Roundabout (STP-0023-00(052)LPA/107476

Attached you will find the Memorandum of Understanding from Mississippi Department of Transportation with regard to Gulf Club Drive Roundabout Project STP-0023-00(052). Your acceptance and approval of the document is hereby requested along with authorization to be executed by the City Manager.

If you find this document to be in order, please proceed acceptance and approval.

Sincerely,

A handwritten signature in black ink that reads 'Clovis Reed'.

Clovis Reed
City Manager

Attachment

CR:jk

Melinda L. McGrath
Executive Director

P. O. Box 1850
Jackson, MS 39215-1850
Telephone (601) 359-7001
FAX (601) 359-7110
GoMDOT.com



Mark C. McConnell
Deputy Executive Director/Chief Engineer
Lisa M. Hancock
Deputy Executive Director/Administration
Willie Huff
Director, Office of Enforcement
Charles R. Carr
Director, Office of Intermodal Planning

16499-B Highway 49, Saucier, Mississippi 39574-9740
November 2, 2015

Mr. Clovis Reed
City Manager
City of Diamondhead
P.O. Box 647
Laurel, MS 39441

RE: Memorandum of Understanding, MOU
Golf Club Drive Roundabout – STP-0023-00(052)LPA / 107476

Dear Mr. Reed,

Attached are the duplicate copies of the Memorandum of Understanding, MOU, for the above referenced project for your review and processing. Please execute the MOU in duplicate and return with governing council or board minutes signifying approval. Please mail to:

Mississippi Department of Transportation
Attn: David Seyfarth
16499-B Highway 49
Saucier, MS 39574-9740

In accordance with the MOU, please remember to include the MDOT in any public relations activities or press release for this project. The MDOT public relations liaison for District VI is Layla Essary, telephone number 601-466-1881. Should you need additional information, contact my office at 228-832-0682.

Sincerely,

A handwritten signature in black ink that reads "Chuck Starita".

Chuck Starita, PE
Asst. District 6 LPA Engineer

cc: Project File 16-10 w/ attachments

Memorandum of Understanding

STP-0023-00(052)LPA / 107476-701000
Golf Club Drive Roundabout
Diamondhead, MS

This Agreement is made between the Mississippi Transportation Commission, a body Corporate of the State of Mississippi (hereinafter referred to as the "COMMISSION"), acting by and through the duly authorized Executive Director of the Mississippi Department of Transportation ("MDOT") and City of Diamondhead, "LPA" (hereinafter referred to as the "LPA"), for the purpose of establishing the conditions under which the LPA may utilize STP Funds and to specify acts required to complete the proposed project as described below, effective as of the date of the last execution by the Commission.

WHEREAS, the LPA has announced its intentions to install roundabout at Golf Club Drive; (hereinafter referred to as the "PROJECT"), and the COMMISSION is hereby consenting to allow the LPA to manage the PROJECT under the terms and provisions of this Memorandum of Understanding; and

WHEREAS, it is anticipated that approximately \$200,000.00 in federal funds (80% federal match and 20% local match) are available for the construction of the PROJECT, and the above mentioned federal funds will expire if they are not obligated on or before N/A. The above funds are subject to normal reductions and obligational limitations; and

WHEREAS, the LPA will be responsible for all PROJECT cost over and above the maximum amount of Federal Funds allocated to the PROJECT by the COMMISSION, and the MDOT requires the LPA to provide the local share (local match) previously stated; and

WHEREAS, the COMMISSION and the LPA desire to set forth more fully the understanding of the parties with respect to the process by which this will be accomplished, and this document supersedes all other agreements related to the above-described PROJECT unless herein specified.

NOW, THEREFORE, for and in consideration of the premises and agreements of the parties as hereinafter contained, the LPA and the COMMISSION enter into this Memorandum of Understanding for these and any future federal funds that may be allocated to this PROJECT, and agree and covenant as follows:

ARTICLE I. DUTIES AND RESPONSIBILITIES

A. The LPA, which is hereby designated as the Local Sponsor for the purposes herein, hereby contracts, covenants and binds itself to the following responsibilities, duties, terms and conditions:

1. The LPA shall immediately designate a full time employee of the LPA as the Project Director, who will serve as the person of responsible charge for the PROJECT and will coordinate all PROJECT activities with the MDOT District LPA Coordinator.

2. The LPA shall follow the procedures set out in the latest online version of the Project Development Manual (PDM) for Local Public Agencies that are necessary for the

PROJECT including, but not limited to, project activation, consultant selection, request and/or develop and follow all necessary permits, environmental process, preliminary design, Right of Way acquisition, advertisement for and selection of a contractor, construction oversight, and project close out.

3. The LPA shall submit to the MDOT four (4) complete sets of "as-built" plans in printed form and the original electronic files in a format that is compatible with Microstation prior to MDOT acceptance. Upon request, MDOT may waive this requirement for selected projects.

4. The LPA shall be responsible for all maintenance and operation of the PROJECT during and after completion so that the federal investment in the PROJECT is preserved. If maintenance is not performed, as appropriate, future federal funds may be withheld for any projects in the jurisdiction of the local agency, or the Commission may seek recovery of project funds through all available legal actions.

5. The LPA shall follow and abide by any and all federal requirements, specifically, but not limited to, the provisions that no retainage shall be withheld from installment payments to the construction contractor.

6. The LPA agrees that if any act of omission or commission on the part of the LPA causes loss of Federal funding from FHWA or any other source, or any penalty being imposed by the United States of America under the Clean Water Act, 33 U.S.C. § 1251, et seq. or any other provision of law, the LPA will be solely responsible for all additional costs.

7. In compliance with State Law, the LPA shall pay all payments owed to Contractors and Consultants according to the terms of the contract, and in all instances payments shall be made within forty-five (45) days from the day they were due and payable. MDOT reserves the right to withhold Federal reimbursement until adequate proof of payment has been produced by the LPA.

Excepted from this requirement are payments to railroads for any work included in the PROJECT. Payments to railroads, their consultants or contractors, for work included in the PROJECT, may be made by MDOT, in its sole discretion. Payments made by MDOT to railroads, their consultants or contractors shall come from the funds obligated for the PROJECT.

8. The LPA shall be solely responsible for payment of any and all funds required to complete the PROJECT, over and above the available federal aid funds for the PROJECT.

9. All contracts and subcontracts shall include a provision for compliance with Senate Bill 2988 from the 2008 Session of the Mississippi Legislature entitled "The Mississippi Employment Protection Act," as published in the General Laws of 2008 and codified in the Mississippi Code of 1972, as amended (Sections 71-11-1 and 71-11-3), and any rules or regulations promulgated by the COMMISSION, the Department of Employment Security, the State Tax Commission, the Secretary of State, or the Department of Human Services in accordance with the Mississippi Administrative Procedures Law (Section 25-43-1, et seq., Mississippi Code of 1972, as amended) regarding compliance with the Act. Under this Act, the LPA and every sub-recipient or subcontractor shall register with and participate in a federal work authorization program operated by the United States

Department of Homeland Security to electronically verify information of newly hired employees pursuant to the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Public Law 104-208., Division C, Section 403(a); 8 USC, Section 1324a.

10. The LPA will be required to acknowledge MDOT and FHWA in all public relations efforts for a project including press releases; materials for groundbreaking, ribbon cuttings or other public events; and any other public information or media resources by notifying the MDOT Public Affairs Division, 601-359-7074, comments@mdot.ms.gov. At a minimum, the following example sentence should be included:

"This project was funded by the Mississippi Department of Transportation and the Federal Highway Administration."

When appropriate, an invitation should be extended to MDOT Public Affairs for the Transportation Commissioner, MDOT Executive Director or other designee to speak at any official public ceremony for this project.

11. In the event right-of-way acquisition for, or actual construction of, the road for which this preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the fiscal year in which this preliminary engineering project is obligated, the LPA may be required to repay to the MDOT the sum or sums of Federal funds reimbursed to the LPA for this preliminary engineering work; and (2) in the event that right-of-way acquisition is started by the close of the tenth federal fiscal year, but construction is not started by the close of the twentieth federal fiscal year following the fiscal year in which this preliminary engineering project is obligated, the LPA may be required to repay to the MDOT the sum or sums of Federal funds reimbursed to the City for this preliminary engineering work and right-of-way acquisition.

12. The LPA will be required to submit to the District LPA Coordinator monthly progress reports through the Notice to Proceed for construction, which shall include, but not be limited to, the work which has been completed that month and the planned work for the upcoming month. The LPA will also provide a project progress schedule which will report project milestones and the target date for the LPA's request for Ad Authority. These project milestones are to be updated once any milestones are missed.

13. The LPA agrees to maintain, and make available to Commission, a sufficient accounting system with proper internal controls and safeguards. The accounting system and its controls should at all times maintain adequate recording and reporting of federal funds received by the LPA. If sufficient internal controls over the LPA's federal funding are not maintained, federal funds may be withheld and future transportation projects will not be considered.

14. The LPA agrees that any planning studies prepared or produced, as part of, or in conjunction with, this project, shall in no way obligate the Commission to any other terms or conditions other than those stated herein.

15. The LPA, being classified as a lower tier participant in federal funding, certifies, by execution of this agreement, that neither it nor those individuals or entities with which it contracts are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

B. THE COMMISSION WILL:

1. Allow the LPA to design and construct the proposed transportation improvements provided that the design meets with MTC and FHWA approval and that all costs of the improvements that are not covered by federal funds are borne by the LPA.
2. Enter into cooperative agreements or permits necessary to allow the LPA access to the property of the COMMISSION for the purposes of constructing the proposed transportation improvements.
3. Work with the LPA, through the District LPA Coordinator, during the various phases of the work with the goal of producing a project that will be acceptable to the COMMISSION upon completion.
4. Review all submittals in a timely manner, in accordance with the PDM, to allow the project to progress in an orderly fashion.
5. During the progress of the PROJECT, assist the LPA in obtaining reimbursements of federal funding for any phase that is eligible for reimbursement. All costs associated with this process, and any other involvement by the MDOT staff in this PROJECT, may be charged as a project cost.
6. Submit all documents to the Federal Highway Administration (FHWA) when required or requested by the FHWA.
7. In its discretion, make payments to railroad companies, their consultants or contractors for work on railroads included in the PROJECT. The payments made shall come from project funds obligated for the PROJECT.

ARTICLE II. GENERAL PROVISIONS

A. Should the LPA fail to complete the construction of the proposed transportation improvements as contemplated by this agreement after construction is commenced, the LPA agrees that it will bear all costs of completion over and above the funds supplied by the FHWA through MDOT. The COMMISSION shall have the right to audit all accounts associated with the PROJECT, and should there be any overpayment by the COMMISSION to the LPA, the LPA agrees to refund any such overpayment within 30 days of written notification. Should the LPA fail to reimburse the COMMISSION, the COMMISSION shall have the right to offset the amount due from any other funds in its possession that are due the LPA on this or any other project, current or future.

B. This Memorandum of Understanding shall be subject to termination at any time upon thirty (30) days written notice by either party. Such notice shall not, however, cancel any contract made in reliance upon this agreement and underway at the time of termination. Any contract underway shall be allowed to conclude under its own terms. The LPA agrees to bear complete and total legal and financial responsibility for any such agreement. Additionally, funds may be suspended/terminated under the provisions of Section F.

C. It is understood that this is a Memorandum of Understanding and that more specific

requirements for the conduct of the design of the transportation improvement project are contained in the Federal Statutes, the Code of Federal Regulations, the Mississippi Code, and the Standard Operating Procedures for MDOT, and other related regulatory authorities. The LPA agrees that it will abide by all such applicable authority.

D. Should the LPA miss the obligation deadline set in this MOU, MDOT reserves the right to obligate funds for the project as obligation authority becomes available, and may not authorize the obligation of those funds until after the obligation of other projects that are set to meet their individual deadlines

E. The Executive Director of MDOT may withhold federal funds for the PROJECT for any of the following reasons:

1. Failure to proceed with the work when so instructed by the MDOT or to adhere to the requirements of the contract.
2. Failure to perform the work with sufficient workmen, equipment and materials to assure completion within contract time.
3. Performing unacceptable work, or neglecting or refusing to remove materials or to perform any such work as may be rejected as unacceptable.
4. Discontinuing the prosecution of the work.
5. Failure to comply with all federal, state and local laws, ordinances, regulations, permits, and all orders and decrees of bodies or tribunal's having jurisdiction or authority which affect those engaged or employed on the work or affect the conduct of the work.
6. Becoming insolvent, being declared bankrupt or committing any act of bankruptcy or insolvency.
7. Allowing a final judgment to stand unsatisfied.
8. Making an assignment for the benefit of creditors.
9. Failure to deal with all storm water issues as defined in the permit and/or PDM.
10. Failure to properly maintain any project that uses federal funds may cause future federal funds to be withheld for any projects in the jurisdiction of the local agency.
11. Failure for any other cause whatsoever to carry on the work in an acceptable manner.

F. It is understood that obligation authority is uncertain and should MDOT or the MPO exceed its obligation authority for the year, the LPA understands that it be may be required to move the project to another fiscal year for the funds to be obligated.

Before federal Funds are terminated, the LPA will be notified in writing by the

Executive Director of the conditions which make termination of funds imminent. If no effective effort has been made by the LPA, its agents, employees, contractors or subcontractors, to correct the conditions of which complaint is made, within fifteen (15) calendar days after notice is given, the Executive Director may declare the Federal Funds suspended for the PROJECT and notify the LPA accordingly. The LPA will then have forty-five (45) days in which to correct all conditions of which complaint is made. If all conditions are not corrected within forty-five (45) days, the Executive Director may declare the federal funds for the PROJECT terminated and notify the LPA accordingly. If all conditions are corrected, within the forty-five (45) day period, the LPA will be reimbursed under the terms of this agreement, for all work satisfactorily completed during the forty-five days period.

G. In the event that circumstances call for MDOT to expend staff time and other resources to address issues on the PROJECT, then MDOT time may be charged to the PROJECT. Assessing charges to a project is within the sole discretion of MDOT. Any charges made will impact the amount of funds available to reimburse the LPA, and therefore the LPA's contribution to the PROJECT may increase.

ARTICLE III. NOTICE & DESIGNATED AGENTS

A. For purposes of implementing this section and all other sections of this Agreement with regard to notice, the following individuals are herewith designated as agents for the respective parties unless otherwise indentured in the addenda hereto:

For Contractual Administrative Matters:

COMMISSION:
Executive Director
MDOT
P.O. Box 1850
Jackson, MS 39215-1850
Phone: (601) 359-7002
Fax: (601) 359-7110

LPA:
Clovis Reed, City Manager
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525
Phone: (228) 222-4626
Fax: (228) 222-4390

For Technical Matters:

COMMISSION:
District LPA Coordinator – District 6
MDOT
16499-B Highway 49
Saucier, MS 39574
Phone: (228) 832-0682
Fax: (228) 832-0681

LPA:
Clovis Reed, City Manager
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525
Phone: (228) 222-4626

B. All notices given hereunder shall be by U.S. Certified Mail, return receipt requested, or by facsimile and shall be effective only upon receipt by the addressee at the above addresses or telephone numbers.

ARTICLE IV. RELATIONSHIP OF THE PARTIES

A. The relationship of the LPA to the COMMISSION is that of an independent contractor, and said LPA, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the COMMISSION by reason hereof. The LPA will not by reason hereof, make any claim, demand or application or for any right or privilege applicable to an officer or employee of the COMMISSION, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage, retirement membership or credit, or any form of tax withholding whatsoever.

B. The COMMISSION executes all directives and orders through the MDOT. The LPA executes all directives and orders pursuant to applicable law, policies, procedures and regulations. All notices, communications, and correspondence between the COMMISSION and the LPA shall be directed to the designated agent shown above in Article III.

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To the extent permitted by law, the Commission and the LPA agree that neither party nor their agents, employees, contractors or subcontractors, will be held liable for any claim, loss, damage, cost, charge or expenditure arising out of any negligent act, actions, neglect or omission caused solely by the other party, its agents, employees, contractors or subcontractors.

ARTICLE VI. MISCELLANEOUS

No modification of this Memorandum of Understanding shall be binding unless such modification shall be in writing and signed by all parties. If any provision of this Memorandum of Understanding shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Memorandum of Understanding is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK

ARTICLE VII. AUTHORITY TO CONTRACT

Both parties hereto represent that they have authority to enter into this Memorandum of Understanding.

This Agreement may be executed in one or more counterparts (facsimile transmission, email or otherwise), each of which shall be an original Agreement, and all of which shall together constitute but one Agreement.

So agreed this the _____ day of _____, 20__.

City of Diamondhead

Clovis Reed, City Manager

Attested:

(Appropriate clerk etc)

So agreed this the _____ day of _____, 20__.

MISSISSIPPI TRANSPORTATION COMMISSION
By and through the duly authorized
Executive Director

Melinda L. McGrath, PE
Executive Director
Mississippi Department of Transportation

Book _____, Page _____,



Agenda Item 2017-040

5000 Diamondhead Circle • Diamondhead, MS 39525-3260
Phone: 228.222.4626 Fax: 228.222.4390
www.diamondhead.ms.gov

November 8, 2016

Mayor and Council
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525

Dear Councilmembers:

RE: Payment #2 to Land Shapers, Inc. – FY16 Paving Projects

Attached you will find Pay Application #2 from Land Shapers, Inc. in the amount of \$210,680.32 for East Aloha Access Road construction. The pay request was submitted in the amount of \$210,727.44 and is being adjusted for city incurred expenses of \$47.12 for repairs to property as agreed to by the contractor.

If you find this document to be in order, please proceed with payment approval.

Sincerely,

A handwritten signature in black ink that reads 'Clovis Reed'.

Clovis Reed
City Manager

Attachment

CR:jk

APPLICATION AND CERTIFICATE FOR PAYMENT

TO: City of Diamondhead Diamondhead, MS	PROJECT: Diamondhead Streets Paving Project	APPLICATION NO: 002	Distribution to: <input type="checkbox"/> OWNER <input checked="" type="checkbox"/> ARCHITECT <input type="checkbox"/> CONTRACTOR
FROM: Land Shapers, Inc. P. O. Box 995 Gulfport Ms. 39502	VIA (ARCHITECT):	PERIOD TO: 11/04/16	PROJECT NO: CONTRACT NO:
CONTRACT FOR: Diamondhead Streets Paving Project		CONTRACT DATE	30-Aug-16

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Change Orders approved in previous months by Owner TOTAL			
Approved this month			
Number	Date Approved		
TOTALS			
Net changes by change order			

The undersigned Contractor certifies that to the best of the Contractors knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the owner, and that current payment shown herein is now due.

CONTRACTOR

By: _____ Date: _____

Application is made for payment as shown below, in connection with the Contract. Continuation sheet is attached

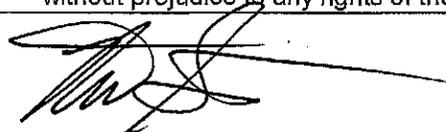
1. ORIGINAL CONTRACT SUM	\$482,120.00
2. Net change by change orders	\$0.00
3. CONTRACT SUM TO DATE	\$482,120.00
4. TOTAL COMPLETED AND STORED TO DATE	\$486,181.60
5. RETAINAGE:	
a. 10% of completed work	\$48,618.16
b. % of stored material	\$0.00
Total retainage	\$48,618.16
6. TOTAL EARNED LESS RETAINAGE	\$437,563.44
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$226,836.00
8. CURRENT PAYMENT DUE	\$210,727.44
9. BALANCE TO FINISH, PLUS RETAINAGE	\$48,618.16

State of: _____ County of: _____
 Subscribed and sworn to before me this _____
 Notary Public
 My Commission expires _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents based on on-site observations and the data comprising the above application, the Architect certifies to the owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED.....
 (Attach explanation if amount certified differs from the amount applied for)
 ARCHITECT:
 By: Ronald T. Parker Date: 11-4-2016
 This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



Agenda Item 2017-042



5000 Diamondhead Circle • Diamondhead, MS 39525-3260
Phone: 228.222.4626 Fax: 228.222.4390
www.diamondhead.ms.gov

November 8, 2016

Mayor and Council
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525

Dear Councilmembers:

Re: City Hall Dumpster Services

Renewal of current dumpster services with Waste Management resulted in a proposed increase from \$57.50 to 79.59 monthly. Team Waste has offered the service at rate consistent with the Solid Waste Authority Contract at rate of \$71.12 per month. It is my recommendation the City no longer contract with Waste Management for these services and to enter into a contract with Team Waste effective November 16, 2016 and ending April 30, 2019 at a rate of \$71.12 per month; The term so recommended would be consistent with the existing Solid Waste Authority's Contract with Team Waste.

Thank you for your consideration and approval in this matter.

Sincerely,

A handwritten signature in black ink that reads 'Clovis Reed'. The signature is written in a cursive style with a large, looping 'C' and 'R'.

Clovis Reed
City Manager

CR:jk



Our Game is Picking Up

SERVICE AGREEMENT

Post Office Box 1350
 Ocean Springs, MS 39566
 Phone: (228) 328-1820
 Fax: (228) 392-3508

PO NO.: _____
 CUSTOMER ACCOUNT NO.: _____
 EFFECTIVE DATE: 11/16/16 _____
 TEMP.: PERM.:

BILLING NAME: City of DiDiamondhead		SITE NAME: City Hall	
BILLING ADDRESS: 5000 Diamondhead Circle		SITE ADDRESS: 5000 Diamondhead Circle	
CITY, ST, ZIP: Diamondhead, MS 39525		CITY, ST, ZIP: Diamondhead MS 39525	
BILLING TEL# : 222-4626	FAX #:	SITE TEL#:	FAX #:
CONTACT: Jeannie	E-MAIL: jklein@diamondhead.ms.gov		CONTACT TEL#: City Clerk

EQUIPMENT/SERVICE SPECIFICATIONS:								
Qty.	Svc Type	Materials	Size	Frequency	Locks	Wheels	Type	Rate
1	f/l	msw	6 yd	1 x wk				\$71.12 <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Haul
								\$ <input type="checkbox"/> Monthly <input type="checkbox"/> Haul
								\$ <input type="checkbox"/> Monthly <input type="checkbox"/> Haul
								\$ <input type="checkbox"/> Monthly <input type="checkbox"/> Haul
								\$ <input type="checkbox"/> Monthly <input type="checkbox"/> Haul
Service Charge per Month:								\$

OTHER FEES:		
Delivery Charge _____	<input type="checkbox"/> \$150 <input checked="" type="checkbox"/> \$0	Extra Pick-up Charges Per _____ Lift \$107.2
Dry Run Relocate _____	\$ _____	4 _____
Lockbar _____	\$ _____	Per Yard Ton _____ \$ _____
Casters _____	\$ _____	TOTAL _____ \$ _____*
Container Maintenance (monthly) _____	\$ _____	*Inactivity fee after 14 days is \$5.00/per day.
Disposal per Load (min 2 tons, max 10 tons) _____	\$ _____	*Fuel surcharge, environmental compliance cost recovery and/or admin fees calculated as a % of the charges will be included in Invoice. 0

OTHER DETAILS:

THE UNDERSIGNED INDIVIDUAL SIGNING THIS AGREEMENT ON BEHALF OF CUSTOMER ACKNOWLEDGES THAT HE/SHE HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF THE CUSTOMER.

CUSTOMER: _____

TEAM WASTE Gulf Coast _____, LLC:

(AUTHORIZED SIGNATURE)

(DATE)

(TEAM WASTE REPRESENTATIVE SIGNATURE)

(DATE)

NAME (PRINTED) _____

NAME (PRINTED) Darlene Gaubert _____

TERMS AND CONDITIONS OF SERVICE AGREEMENT

in force thru 4/30/19

(1) **TERM.** The term of this Agreement shall be for 60 months from the effective date of service, and shall be automatically renewed for 12 months thereafter unless either party shall give written notice of termination (Certified Mail) to the other party at least 90 days but not more than 180 days prior to the termination of the initial term or any renewal term. Customer must provide Contractor with written notice by (Certified Mail) of any deficiency in Contractor service and Contractor shall, within thirty (30) days, remedy said deficiency in a prudent manner. If such deficiency is not remedied within thirty (30) days, Customer may then and only then, cancel said Contract and our services hereunder without penalty.

(2) **SERVICES RENDERED.** Customer grants to the undersigned (Team Waste) the exclusive right to collect and dispose of all of Customer's Waste Materials (which include recyclable materials) and agrees to make the payments as provided herein and, Contractor agrees to furnish such services and equipment specified above, all in accordance with the terms of this Agreement.

(3) **CHARGES AND PAYMENT.** Customer shall pay Contractor on a monthly basis for the collection and disposal service provided by Contractor (including all charges for equipment and maintenance), in accordance with the schedule of charges shown on the reverse side of this Agreement.

Payments shall be made by Customer within ten (10) days after receipt of an invoice from Contractor. Contractor may impose, and Customer agrees to pay, a late fee and interest for all past due payments not to exceed the maximum rate allowed by applicable law. In the event that any payment is not made when due, Contractor may, at its sole option, terminate the Agreement on notice to the Customer and recover all past due payments, recover any equipment on the premises of the Customer and to recover liquidated damages from Customer as set forth below.

(4) **RATE ADJUSTMENTS.** Because disposal, environmental compliance and fuel costs constitute a portion of the service costs provided by Contractor and its affiliates, Customer understands and agrees Contractor may increase service rates to account for any increase in such costs or to account for any increase in transportation costs due to changes in location of the disposal facility by showing the amount on the Customer's invoice. Customer agrees Contractor may also increase service rates, without prior notice or consent, to adjust for cost increases or to achieve, among other things, an operating margin acceptable to Contractor and its affiliates. Customer agrees Contractor may impose and Customer must pay any environmental and fuel fees, and any other fees and assessments such as maintenance or administrative fees, included on Customer's invoice, and that Contractor may increase or decrease these fees or assessments at any time and for any reason by showing the amount on Customer's invoice. Customer understands and agrees that increases in the service rates referenced above, and increases in the environmental and fuel fees, and any other fees and assessments, such as maintenance or administrative fees, may be made at any time and for any reason, including to help recover a portion of overall costs incurred by Contractor or its affiliated entities as may be necessary to achieve an operating margin acceptable to Contractor. Customer agrees Contractor may pass through to Customer cost increases caused by weights being higher than those estimated. Customer shall pay all federal, state, local or other taxes, assessments, fees, host charges, or similar charges directly or indirectly related to the transportation, collection, or disposal of solid waste which are imposed on Contractor by law, ordinance, or regulation and/or agreement with governmental body, whether imposed retroactively or prospectively. In the event of occurrence of an act, event, or condition that is beyond the control of Contractor and that materially or adversely affects the cost of operation or maintenance of Contractor's equipment and facilities, Contractor may increase the applicable service rates, fees, and assessments in this Agreement to the extent necessary to help offset, directly or indirectly, the increase in such costs. Contractor may increase service rates, fees, and assessments for reasons other than those set forth above with the consent of Customer. Such consent may be evidenced verbally, in or by the actions and practices of the parties, or by payment of the invoice service rates, fees and assessments. Notwithstanding anything to the contrary, if the Customer does not object, in writing, within 30 days of the invoice date, the Customer shall have conclusively agreed that such invoice is correct in all respects, whether paid or not. Where the Schedule of Charges lists "disposal" as a component of the charges, "disposal" shall mean the posted gate rate for disposal at the disposal facility utilized by Contractor plus an appropriate handling charge.

(5) **CHANGES.** Changes in the Schedule of Charges, frequency of collection service, number, capacity, and/or type of equipment may be agreed to orally, in writing, or by the actions and practices of the parties.

(6) **WASTE MATERIAL.** Customer represents and warrants that the materials placed in the equipment shall be "waste material" as defined herein and shall contain no other substances. The term "waste material" as used in these Terms and Conditions shall mean solid waste generated by Customer excluding radioactive, volatile, highly flammable, explosive, biomedical, infectious, toxic or hazardous material. The term "hazardous material" shall include but not be limited to, any amount of waste listed or characterized as hazardous by the United States Environmental Protection Agency or any state agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, or applicable state law. Contractor shall acquire title to the waste material when it is loaded into Contractor's trucks. Title to and liability for any waste excluded above shall remain with Customer and Customer expressly agrees to defend, indemnify and hold harmless Contractor from and against any and all damages, penalties, fines and liabilities resulting from or arising out of such waste excluded above.

(7) **DRIVEWAYS AND PARKING AREAS.** Customer warrants that any right of way provided by Customer for Contractor's equipment location to the most convenient public way is sufficient to bear the weight of all Contractor's equipment and vehicles reasonable required to perform the service herein contracted. Contractor shall not be responsible for damage to any private pavement or accompanying sub-surface of any route reasonably necessary to perform the services herein contracted and Customer assumes all liabilities for damage to pavement or road service.

(8) **EQUIPMENT.**

(a). **Responsibility.** The equipment furnished hereunder by Contractor shall remain the property of Contractor; however, Customer acknowledges that it has care, custody and control of the equipment while at the Customer's location and accepts responsibility for all loss or damage to the equipment (except for normal wear and tear or for the loss or damage resulting from Contractor's handling of the equipment) and for its contents. Customer agrees not to overload (by weight or volume), move or alter the equipment, and shall use the equipment only for its proper and intended purpose. Customer agrees to indemnify, defend and hold harmless Contractor against all claims, damages, suits, penalties, fines and liabilities for injury or death to persons or loss or damage to property arising out of customer's use, operation or possession of the equipment.

(b). **Access.** Customer agrees to provide unobstructed access to the equipment on the scheduled collection day. If the equipment is inaccessible so that the regularly scheduled pickup cannot be made, Contractor will promptly notify the Customer and afford the Customer a reasonable opportunity to provide the required access; however, Contractor reserves the right to charge an additional fee for any additional collection service required by Customer's failure to provide such access.

(c). **Definition.** The word "equipment" as used in these Terms and Conditions shall mean all containers used for the storage of waste material including stationary compaction units, stationary bailing units, waste material loading devices, tanks, tankers, and such other on-site devices as may be specified on the face of this Agreement.

(9) **LIQUIDATED DAMAGES.** If customer defaults or attempts to cancel Contractor's services or this Agreement, Customer agrees that the Contractor's actual damages would be difficult, if not impossible, to calculate. Therefore, Customer agrees that in such event it shall pay all past due sums and, in addition, shall pay as liquidated damages and not as a penalty an amount equal to 30% of the product of the last monthly charge at the time of default or cancellation multiplied by the number of months then remaining in the current term of the Agreement; plus all attorney's fees Contractor needs to enforce its rights against Customer for cancellation of said contract. Customer shall pay liquidated damages of \$100 for each tire that is placed in the equipment and delivered to the disposal facility by Contractor.

(10) **ATTORNEY'S FEES.** In the event a breach of this Agreement by either party, the breaching party shall pay all reasonable attorney's fees, collection fees and costs of the other party in incident to any action brought to enforce this Agreement. In the event Customer fails to pay Contractor all amounts which become due under this Agreement, or fails to perform its obligations hereunder, and Contractor refers such matter to an attorney, Customer agrees to pay, in addition to the amount due, any and all costs incurred by Contractor as a result of such action, including, to the extent permitted by law, reasonable attorneys' fees.

(11) **RIGHT OF FIRST REFUSAL.** Customer grants to Contractor a right of first refusal to match any offer relating to services similar to those provided hereunder which Customer receives (or intends to make) upon termination of this Agreement for any reason and Customer shall give Contractor prompt written notice of any such offer and a reasonable opportunity to respond to it. Additionally, if Customer desires to recycle, Contractor shall have the right of first refusal to provide such recycling services.

(12) **ASSIGNMENT AND BENEFIT.** This Agreement shall not be affected by any changes in the Customer's service address if such new address is located within Contractor's service area. This Agreement shall be binding on the parties and their successors and assigns.

(13) **EXCUSED PERFORMANCE.** Neither party hereto shall be liable for its failure to perform or delay in performance hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, compliance with laws or governmental orders, inability to get to container, fires and acts of God and such failure shall not constitute a Default under this Agreement.

Customer
Signature: _____

Date: _____

ESC
Rev. 08/28/94 (Base)
Rev. 08/30/16 (This form)

PRELIMINARY ENGINEERING SERVICES CONTRACT

***City of Diamondhead Safe Routes to School Project
STP-023-00(51)LPA/107369-701000
Hancock County, MS***

THIS CONTRACT, is made and entered into by and between the *City of Diamondhead*, a body Politic of the State of Mississippi (the "LPA"), and, *MS Engineering and Development, LLC* (the "CONSULTANT"), a *Limited Liability Company*, duly registered to do business in the State of Mississippi, whose address for mailing is *7604 Fairway Drive, Diamondhead MS 39525*, effective as of the date of latest execution below.

WITNESSETH:

WHEREAS, the LPA proposes to perform *a Safe Routes to School Project that shall consist of Sidewalks Improvements along Golf Club Drive from Diamondhead Drive East to Country Club Circle, bike racks and covered bus stops at five other areas throughout the City of Diamondhead including signage and pavement markings*, as provided for in Project No. STP-023-00(051)LPA/107369-701000, hereinafter called the "PROJECT"; and,

WHEREAS, the LPA desires to engage a qualified and experienced CONSULTANT to perform engineering services in connection with the PROJECT, all of which are hereinafter called the "SERVICES"; and,

WHEREAS, the CONSULTANT has represented to the LPA that it is experienced and qualified to provide those services, and the LPA has relied upon such representation; and,

WHEREAS, the CONSULTANT herein was chosen for their expertise in performing the services in connection with the PROJECT and found satisfactory by the LPA; which is now desirous of entering into a contract;

WHEREAS, the CONSULTANT herein was chosen through the LPA Consultant Selection Process pursuant to Mississippi Department of Transportation (hereinafter "MDOT") LPA Project Development Manual and pursuant to Federal Highway Administration ("FHWA") regulations, Engineering and Design Related Service Contracts, 23 C.F.R. Part 172 (as amended) and found satisfactory;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein and for other good and valuable considerations flowing unto the parties, the receipt and sufficiency of which is hereby acknowledged, the LPA and the CONSULTANT do hereby contract and agree as follows:

ARTICLE I. GENERAL RECITALS

CONSULTANT shall, for the agreed fees, furnish all engineering services and materials required to perform the tasks described in the Scope of Work for the proposed transportation project. In so doing, CONSULTANT shall meet the current industry standards (and any MDOT or LPA standards identified in Exhibit 2) as to general format and content and in addition thereto, any special requirements of the LPA.

THE LPA, in support of CONSULTANT will provide the CONSULTANT a Scope of Work shown in "Exhibit 2" hereto and any other data which may be of assistance to CONSULTANT and within the possession and control of the LPA.

Manuals, guides, and specifications applicable to this CONTRACT shall be those approved and/or adopted by MDOT and in effect on the effective date of this CONTRACT, unless otherwise specified in this Contract or subsequently directed by MDOT during the course of the CONTRACT.

ARTICLE II. SCOPE OF WORK

The CONSULTANT shall conduct the SERVICES in accordance with the Scope of Work attached to this CONTRACT as "Exhibit 2" and made a part hereof as if fully set forth herein. The performance of the SERVICES referred to in "Exhibit 2" shall be the primary basis for measurement of performance under this CONTRACT. The LPA specifically reserves the right and privilege to enlarge or reduce the scope; or to cancel this CONTRACT at any time.

ARTICLE III. CONTRACT TERM

This CONTRACT shall commence upon the latest date of execution below and continue until such time as the above named project is successfully completed to the satisfaction of the LPA or until **November 1, 2017 at 12:00 am**, CDT, at which time this CONTRACT shall absolutely and finally terminate.

During the term of this CONTRACT, the LPA reserves the right to terminate this CONTRACT in whole or in part, at any time, with or without cause, upon seven (7) days written notice to the CONSULTANT, notwithstanding any just claims by the CONSULTANT for payment of SERVICES rendered prior to the date of termination. The LPA shall be liable only for the costs, fees and expenses for demobilization and close out of contract, based on actual time and expenses incurred by CONSULTANT in the packaging and shipment of all documents covered by this CONTRACT to the LPA. In no event shall the LPA be liable for lost profits or other consequential damages.

ARTICLE IV. TIME OF PERFORMANCE

TIME IS OF THE ESSENCE IN THIS CONTRACT. The CONSULTANT shall be prepared to perform its responsibilities for providing SERVICES commencing on the date of execution of the CONTRACT.

The CONSULTANT has submitted a proposed project schedule to the LPA which has been incorporated herein as a part of "Exhibit 2", which when approved by final execution of this CONTRACT shall control the evaluation of the CONSULTANT's progress on this PROJECT. A copy of the progress schedule, indicating the actual time expended on specific portions of this project, shall be submitted along with an estimated percentage completed with each monthly statement.

A Notice to Proceed shall be issued under authority from the LPA within 30 days after final execution of this CONTRACT. The CONSULTANT may not begin work on any feature of this PROJECT prior to receiving a Notice to Proceed from the LPA.

ARTICLE V. RELATIONSHIP OF THE PARTIES

The relationship of the CONSULTANT to the LPA is that of an independent contractor, and said CONSULTANT, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the LPA by reason hereof. The CONSULTANT will not by reason hereof, make any claim, demand or application or for any right or privilege applicable to an officer or employee of the LPA, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage, retirement membership or credit, or any form of tax withholding whatsoever.

All notices, communications, and correspondence between the LPA and the CONSULTANT shall be directed to the key personnel and agents designated in this contract.

ARTICLE VI. COMPENSATION, BILLING & AUDIT

A. Cost and Fees

The CONSULTANT shall be paid on the basis set forth in "Exhibit 3" to this CONTRACT. Under no circumstances shall the LPA be liable for any amounts, including any costs, which exceed the maximum dollar amount of compensation that is specified in and set forth in "Exhibit 3".

B. Monthly Billing

The CONSULTANT must submit monthly billing to the LPA. (A sample of a preferred invoice is attached as "Exhibit 4".) All billing must be submitted in accordance with the Local Public Agency Consultant Operating Procedures. Each billing shall include all time and allowable expenses through the end of the billing period. Direct expenses, as used herein, include the costs of travel, subsistence, shipping charges, long distance telephone calls and printing if it is not company accounting policy to include these costs in overhead rates. The LPA retains the right to verify time and expense records by audit of any or all CONSULTANT's time and accounting records at any time during the life of the CONTRACT and up to three years thereafter.

If SERVICES are rendered within a given State fiscal year, an invoice requesting payment from the CONSULTANT shall be presented to the LPA within 60 days of the end of the State fiscal year. **Should the CONSULTANT fail to present the invoice within the allotted time, legislative approval may be required before payment can be rendered.**

The CONSULTANT further agrees that FHWA or any other Federal Agency may audit the same records at any time during the life of the CONTRACT and up to three years thereafter, should the funding source for all or any part of the CONTRACT be funds of the United States of America.

C. Record Retention

The CONSULTANT shall maintain all time and expense records incurred on the PROJECT and used in support of its proposal and shall make such material available at all reasonable times during the period of the CONTRACT and for three years from the date of final payment under this CONTRACT for inspection by the LPA, and copies thereof shall be furnished upon request, at the LPA's expense. The CONSULTANT agrees that the provisions of this Article shall be included in any CONTRACT it may make with any subconsultant, assignees or transferees.

D. Retainage

The LPA shall retain the final 25% of the CONSULTANT's Fixed Fee until the final payment request has been received and an audit of the total PROJECT cost to date has been completed by the LPA or its designee.

ARTICLE VII. FINAL PAYMENT

The CONSULTANT shall clearly indicate on its last Invoice for the CONTRACT that the Invoice is "FINAL". The LPA will confirm that the CONTRACT is ready to be closed and the "FINAL" Invoice may be paid. All "FINAL" invoices shall pay any retainage withheld on the CONTRACT. However, under no circumstances will the total amount paid exceed the maximum not to exceed amount established for the CONTRACT. The CONSULTANT agrees that acceptance of the final payment shall be in full and final settlement of all claims arising against the LPA for work done, documents furnished, cost incurred, or otherwise arising out of this CONTRACT and shall release the LPA from any and all further claims of whatever nature, whether known or unknown, for and on account of said CONTRACT, including payment for any and all work done, and labor and material furnished in connection with the same. Errors and/or omissions discovered subsequent to the acceptance by the LPA of the final contract documents shall be corrected by the CONSULTANT without additional compensation. The CONSULTANT shall submit their "FINAL" invoice no later than 45 days following termination of the CONTRACT.

ARTICLE VIII. REVIEW OF WORK

Authorized representatives of the LPA may at all reasonable times review and inspect the SERVICES under this CONTRACT and any addenda or amendments thereto. Authorized representatives of the FHWA may also review and inspect the SERVICES under this CONTRACT should funds of the United States of America be in any way utilized in payment for said SERVICES. Such inspection shall not make the United States of America a party to this CONTRACT, nor will FHWA interfere with the rights of either party hereunder.

All reports, drawings, studies and maps prepared by and for the CONSULTANT, shall be made available to authorized representatives of the LPA for inspection and review at all reasonable times in the General Offices of the LPA. Authorized representatives of the FHWA may also review and inspect said reports, drawings, studies and maps prepared under the CONTRACT should funds of the United States of America be in any way utilized in payment for the same. Acceptance by the LPA shall not relieve the CONSULTANT of its professional obligation to correct, at its expense, any of its breaches, errors and/or omissions, in the final version of the work.

The CONSULTANT shall be responsible for performance of and compliance with all terms of this CONTRACT, including the Scope of Work and other exhibits, and including any technical specifications and special requirements of the LPA, and shall be responsible for errors and/or omissions, including those as to conduct and care, format and content, for all aspects of the CONTRACT, and including professional quality and technical accuracy of all designs, drawings, specifications, and other services furnished by the CONSULTANT.

Failure to comply with any terms of this CONTRACT shall be corrected by the CONSULTANT without additional compensation.

If any breach of CONTRACT, is discovered by LPA personnel after final acceptance of the work by the LPA, then the CONSULTANT shall, without additional compensation, cure any deficiency or breach including errors and/or omissions in designs, plans, drawings, specifications, or other services.

In the event that the project schedule requires that a breach of this CONTRACT be corrected by someone other than the CONSULTANT then the actual costs incurred by the LPA for such corrections shall be the responsibility of the CONSULTANT. The LPA shall give the CONSULTANT an opportunity to correct said breach unless (1) the LPA determines, in its sole discretion, that the CONSULTANT cannot cure the breach within the schedule established by the LPA, or (2) the LPA determines, in its sole discretion, that the CONSULTANT cannot cure the breach to the satisfaction of the LPA.

In the event that the CONSULTANT breaches this CONTRACT, and the breaches of the CONSULTANT are discovered during the construction phase, then an accounting of all costs incurred by the LPA resulting from such breach, including errors and/or omissions, will be made and such amount will be recovered from the CONSULTANT.

ARTICLE IX. RESPONSIBILITIES FOR CLAIMS AND LIABILITY

The CONSULTANT shall indemnify, defend and hold harmless the LPA and all its officers, agents and employees from any claim, loss, damage, cost, charge or expense arising out of any negligent act, actions, neglect or omission by the CONSULTANT, its agents, employees, or subconsultants during the performance of this CONTRACT, whether direct or indirect, and whether to any person or property for which LPA or said parties may be subject, except that neither the CONSULTANT nor any of his agents or subconsultants will be liable under this provision for damages arising out of the injury or damage to persons or property solely caused or resulting from the negligence of the LPA or any of its officers, agents or employees.

The CONSULTANT'S obligations under this Article, including the obligations to indemnify, defend, hold harmless, pay reasonable attorney fees or, at the LPA'S option, participate and associate with the LPA in

the defense and trial or arbitration of any damage claim, lien or suit and any related settlement negotiations, shall be initiated by the LPA'S notice of claim for indemnification to the CONSULTANT. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the LPA entirely responsible shall excuse performance of this provision by the CONSULTANT. In such case, the LPA shall pay all costs and fees related to this obligation and its enforcement. Should there be a finding of dual or multiple liability, costs and fees shall be apportioned accordingly.

In conjunction herewith, the LPA agrees to notify CONSULTANT in writing as soon as practicable after receipt or notice of any claim involving CONSULTANT. These indemnities shall not be limited by reason of the listing of any insurance coverage below.

ARTICLE X. INSURANCE

Prior to beginning any work under this CONTRACT, the CONSULTANT shall obtain and furnish proof of insurance through Certificates of Insurance and, at the LPA's request, copies of insurance policies of the following:

- A. Workers' Compensation Insurance in accordance with the laws of the State of Mississippi.
- B. Commercial General Liability Insurance with a minimum combined limit of not less than One Million Dollars (\$1,000,000.00) for each occurrence.
- C. Errors and Omissions (Professional Liability) Insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim; One Million Dollars (\$1,000,000.00) annual aggregate.
- D. Comprehensive Automobile Liability Insurance, in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

The LPA shall be listed as a certificate holder of insurance on any of the insurance required under this CONTRACT.

In the event that the CONSULTANT retains any subconsultant or other personnel to perform SERVICES or carry out any activities under or incident to work on any project or phase of this CONTRACT, the CONSULTANT agrees to obtain from said subconsultant or other personnel, certificates of insurance demonstrating that said subconsultant or other personnel shall have sufficient coverage, or the CONSULTANT agrees to include said subconsultant or other personnel within the CONSULTANT'S coverage for the duration of this PROJECT or phase for which said subconsultant or other personnel is employed.

The Insurance coverage recited above shall be maintained in full force and effect by the CONSULTANT during the entire term of the CONTRACT. The LPA shall be notified of cancellation of any of the required insurance by the CONSULTANT and by the insurance company issuing any such cancellation of the required policies. Should the CONSULTANT cease to carry the errors and/or omissions coverage listed above for any reason, it shall obtain "tail" or extended reporting period coverage at the same limits for a period of not less than three (3) years subsequent to policy termination or contract termination, whichever is longer.

All insurance carriers shall be licensed and in good standing with the Office of the Insurance Commissioner of the State of Mississippi.

A certificate of insurance acceptable to the LPA shall be issued to the LPA by the CONSULTANT prior to beginning any work under this CONTRACT and thereafter on an annual basis for the duration of this CONTRACT as evidence that policies providing the required insurance are in full force and effect. All policies of required insurance shall give thirty days written notice to the LPA before the effective date of cancellation or reduction in limits of any required insurance.

The CONSULTANT will furnish certified copies, upon request, of any or all of the policies and/or endorsements to the LPA prior to the execution of this CONTRACT and thereafter on an annual basis for the duration of this CONTRACT.

The CONSULTANT shall provide the LPA any and all documentation necessary to prove compliance with the insurance requirements of this CONTRACT as such documentation is requested, from time to time, by the LPA.

If the CONSULTANT fails to procure or maintain required insurance, the LPA may immediately elect to terminate this CONTRACT or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the LPA shall be repaid by the CONSULTANT to the LPA upon demand, or the LPA may offset the cost of the premiums against any monies due to the CONSULTANT from the LPA.

ARTICLE XI. COVENANT AGAINST CONTINGENT FEES AND LOBBYING

The CONSULTANT shall comply with the relevant requirements of all federal, state or local laws. The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this CONTRACT, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of the CONTRACT. The CONSULTANT warrants that it shall not contribute any money, gift or gratuity of any kind, either directly or indirectly to any employee of the LPA, or to any employee of the Mississippi Department of Transportation. For breach or violation of this warranty, the LPA shall have the right to terminate this CONTRACT without liability, and the CONSULTANT shall forfeit any sums due hereunder at the time of such breach and may be barred from performing any future services for the LPA or participating in any future contracts with the LPA.

ARTICLE XII. EMPLOYMENT OF LPA'S PERSONNEL

The CONSULTANT shall not employ any person or persons in the employ of the LPA for any work required by the terms of this CONTRACT, without the written permission of the LPA, except as may otherwise be provided for herein.

ARTICLES XIII. MODIFICATION

If, prior to the satisfactory completion of the SERVICES under this CONTRACT, the LPA materially alters the scope, character, complexity or duration of the SERVICES from those required under this CONTRACT, a supplemental agreement may be executed between the parties. Also, a supplemental agreement may be executed between the parties in the event that both parties agree the CONSULTANT's compensation should be increased due to an unanticipated increase in the nature, scope or amount of work necessary to properly provide the SERVICES required on any particular phase or project begun hereunder.

Oral agreements or conversations with the LPA, any individual member of the LPA, officer, agent, or employee of the Mississippi Department of Transportation, either before or after execution of this CONTRACT, shall not affect or modify any of the terms or obligations contained in this CONTRACT. All modifications to this CONTRACT, amendments or addenda thereto must be submitted in writing and signed by the parties thereto before any work is commenced.

The CONSULTANT may not begin work on any modifications, amendments, or addenda prior to receiving a Notice to Proceed.

Minor changes in the proposal which do not involve changes in the contract maximum not to exceed amount, extensions of time or changes in the goals and objectives of the CONTRACT may be made by written

notification of such change by either the LPA or the CONSULTANT to the other party, and shall become effective upon written acceptance thereof (i.e. letter agreement).

ARTICLE XIV. SUBLETTING, ASSIGNMENT OR TRANSFER

It is understood by the parties to this CONTRACT that the work of the CONSULTANT is considered personal by the LPA. The CONSULTANT shall not assign, sublet or transfer any or all of its interest in this CONTRACT without prior written approval of the LPA. Under no circumstances will CONSULTANT be allowed to sublet more than 60% of the work required under this contract. It is clearly understood and agreed that specific projects or phases of the work may be sublet in their entirety provided that CONSULTANT performs at least 40% of the overall contract with its own forces. Consent by the LPA to any subcontract shall not relieve CONSULTANT from any of its obligations hereunder, and CONSULTANT is required to maintain final management responsibility with regard to any such subcontract.

The LPA reserves the right to review all subcontract documents prepared in connection with this CONTRACT, and the CONSULTANT agrees that it shall submit to the LPA any proposed subcontract document together with subconsultant cost estimates for review and written concurrence of the LPA in advance of their execution.

The CONSULTANT shall make prompt payment to all subconsultants no later than 15 days from receipt of each payment the LPA makes to the CONSULTANT. Each month, the CONSULTANT shall submit OCR-484-C found on MDOT's website to the LPA along with the Invoice. This form certifies payments to all Subconsultants and shows all firms even if the CONSULTANT has paid no monies to the firm during that estimate period (negative report).

ARTICLE XV. OWNERSHIP OF PRODUCTS AND DOCUMENTS AND WORK MADE FOR HIRE

The CONSULTANT agrees that all reports, computer information and access, drawings, studies, notes, maps and other data, prepared by and for them under the terms of this CONTRACT shall be delivered to, become and remain in the property of the LPA upon creation and shall be delivered to the LPA upon termination or completion of work, or upon request of the LPA regardless of any claim or dispute between the parties. All such data shall be delivered within thirty (30) days of receipt of a written request by the LPA.

The CONSULTANT and the LPA intend and agree that this CONTRACT to be a contract for services and each party considers the products and results of the services to be rendered by the CONSULTANT hereunder, including any and all material produced and/or delivered under this CONTRACT (the "Work"), to be a "work made for hire" under U.S. copyright and all applicable laws. The CONSULTANT acknowledges and agrees that the LPA owns all right, title, and interest in and to the Work including, without limitation, the copyright thereto and all trademark, patent, and all intellectual property rights thereto.

If for any reason the Work would not be considered a work made for hire under applicable law, or in the event this CONTRACT is determined to be other than a contract or agreement for a work made for hire, the CONSULTANT does hereby transfer and assign to the LPA, and its successors and assigns, the entire right, title, and interest in and to any Work prepared hereunder including, without limitation, the following: the copyright and all trademark, patent, and all intellectual property rights in the Work and any registrations and copyright, and/or all other intellectual property, applications relating thereto and any renewals and extensions thereof; all works based upon, derived from, or incorporating the Work; all income, royalties, damages, claims, and payments now or hereafter due or payable with respect thereto; all causes of action, either in law or in equity, for past, present, or future infringement based on the copyrights and/or all other intellectual property; all rights, including all rights to claim priority, corresponding to the foregoing in the United States and its territorial possessions and in all foreign countries. The CONSULTANT agrees to execute all papers and perform such other proper acts as the LPA may deem necessary to secure for the LPA or its designee the rights herein assigned.

The LPA may, without any notice or obligation of further compensation to the CONSULTANT, publish, re-publish, anthologize, use, disseminate, license, or sell the Work in any format or medium now known or hereafter invented or devised. The LPA'S rights shall include, without limitation, the rights to publish, re-publish, or license a third party to publish, re-publish, or sell the Work in print, on the World Wide Web, or in any other electronic or digital format or database now known or hereafter invented or devised, as a separate isolated work or as part of a compilation or other collective work, including a work different in form from the first publication, and to include or license a third party to include the Work in an electronic or digital database or any other medium or format now known or hereafter invented or devised.

The CONSULTANT shall obtain any and all right, title, and interest to all input and/or material from any third party subconsultant, or any other party, who may provide such input and/or material to any portion of the Work so that said right, title, and interest, and all such interest in and to the Work including, without limitation, the copyright thereto and all trademark, patent, and all intellectual property rights thereto, shall belong to the LPA.

For any intellectual property rights currently owned by third parties or by the CONSULTANT and not subject to the terms of this CONTRACT, the CONSULTANT agrees that it will obtain or grant royalty-free, nonexclusive, irrevocable license(s) for or to the LPA at no cost to the LPA to use all copyrighted or copyrightable work(s) and all other intellectual property which is incorporated in the material furnished under this CONTRACT. Further, the CONSULTANT warrants and represents to the LPA that it has obtained or granted any and all such licensing prior to presentation of any Work to the LPA under this CONTRACT. This obligation of the CONSULTANT does not apply to a situation involving a third party who enters a license agreement directly with the LPA.

The CONSULTANT warrants and represents that it has not previously licensed the Work in whole or in part to any third party and that use of the Work in whole or in part will not violate any rights of any kind or nature whatsoever of any third party. The CONSULTANT agrees to indemnify and hold harmless the LPA, its successors, assigns and assignees, and its respective officers, directors, agents and employees, from and against any and all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees), arising out of or in any way connected with any breach of any representation or warranty made by CONSULTANT herein.

ARTICLE XVI. PUBLICATION AND PUBLICITY

The CONSULTANT agrees that it shall not for any reason whatsoever communicate to any third party, with the exception of the MDOT and the FHWA, in any manner whatsoever concerning any of its CONTRACT work product, its conduct under the CONTRACT, the results or data gathered or processed under this CONTRACT, which includes, but is not limited to, reports, computer information and access, drawings, studies, notes, maps and other data prepared by and for the CONSULTANT under the terms of this CONTRACT, without prior written approval from the LPA, unless such release or disclosure is required by judicial proceeding. The CONSULTANT agrees that it shall immediately refer any third party who requests such information to the LPA and shall also report to the LPA any such third party inquiry, with the exception of the MDOT and/or the FHWA. This Article shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the CONSULTANT from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the CONSULTANT to defend itself from any suit or claim.

IT IS FURTHER AGREED, that all approved releases of information, findings, and recommendations shall include a disclaimer provision and that all published reports shall include that disclaimer on the cover and title page in the following form:

The opinions, findings, and conclusions in this publication are those of the author(s) and not necessarily those of the Local Public Agency, Mississippi Department of Transportation, Mississippi Transportation Commission, the State of Mississippi, or the Federal Highway Administration.

ARTICLE XVII. CONTRACT DISPUTES

This CONTRACT shall be deemed to have been executed in **Hancock** County, Mississippi, and all questions including, but not limited to, questions of interpretation, construction and performance shall be governed by the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect to this CONTRACT shall be brought in a court of competent jurisdiction in **Hancock County**, State of Mississippi. The CONSULTANT expressly agrees that under no circumstances shall the LPA be obligated to or responsible for payment of an attorney's fee for the cost of legal action to or on behalf of the CONSULTANT.

ARTICLE XVIII. COMPLIANCE WITH APPLICABLE LAW

- A. The undersigned certify that to the best of their knowledge and belief, the foregoing is in compliance with all applicable laws.
- B. The CONSULTANT shall observe and comply with all applicable federal, state, and local laws, rules and regulations, policies and procedures, ordinances, and orders and decrees of bodies or tribunals of the United States of America or any agency thereof, the State of Mississippi or any agency thereof, and any local governments or political subdivisions, that are in effect at the time of the execution of this CONTRACT or that may later become effective.
- C. The CONSULTANT shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this CONTRACT because of race, creed, color, sex, national origin, age or disability.
- D. IT IS FURTHER SPECIFICALLY AGREED that the CONSULTANT shall comply and shall require its subconsultants to comply with the regulations for COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, as amended, and all other applicable federal regulations as stated in "Exhibit 5" which is incorporated herein by reference.
- E. It is agreed that the CONSULTANT will comply with the provisions set forth in Department of Transportation, 49 CFR, Section 18, Et Seq., regarding Uniform Administrative Requirements for Grants and Cooperative agreements in its administration of this CONTRACT or any subcontract resulting herefrom.
- F. The CONSULTANT agrees that it will abide by the provisions of 49 CFR Section 26 regarding disadvantaged business enterprises and include the certification made in "Exhibit 5" to this CONTRACT in any and all subcontracts which may result from this CONTRACTS.
- G. The CONSULTANT shall comply and shall require its subconsultants to comply with Code of Federal Regulations CFR 23 Part 634 - Worker Visibility – as stated in "Exhibit 5".
- H. IMMIGRANT STATUS CERTIFICATION. The CONSULTANT represents that it is in compliance with the Immigration Reform and Control Act of 1986 (Public Law 99-603), as amended, in relation to all employees performing work in the State of Mississippi and does not knowingly employ persons in violation of the United States immigration laws. The CONSULTANT further represents that it is registered and participating in the Department of Homeland Security's E-Verify™ employment eligibility verification program, or successor thereto, and will maintain records of compliance with the Mississippi Employment Protection Act including, but not limited to, requiring compliance certification from all subconsultants

and vendors who will participate in the performance of this Agreement and maintaining such certifications for inspection if requested. The CONSULTANT acknowledges that violation may result in the following: (a) cancellation of any public contract and ineligibility for any public contract for up to three (3) years, or (b) the loss of any license, permit, certification or other document granted by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. The CONSULTANT also acknowledges liability for any additional costs incurred by the LPA due to such contract cancellation or loss of license or permit. The CONSULTANT is required to provide the certification on Exhibit 9 in this CONTRACT to the LPA verifying that the CONSULTANT and subconsultant(s) are registered and participating in E-Verify prior to execution of this CONTRACT

- I. The covenants herein shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

ARTICLE XIX. WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants, and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time, or of any other provision hereof, nor shall it be construed to be a modification of the terms of this CONTRACT.

ARTICLE XX. SEVERABILITY

If any terms or provisions of this CONTRACT are prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this CONTRACT shall not be affected thereby and each term and provision of this CONTRACT shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE XXI. ENTIRE AGREEMENT

This CONTRACT constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings, and agreements, written or oral, between the parties relating thereto.

ARTICLE XXII. CONFLICT OF INTEREST

The CONSULTANT covenants that no public or private interests exist and none shall be acquired directly or indirectly which would conflict in any manner with the performance of the CONSULTANT'S CONTRACT. The CONSULTANT further covenants that no employee of the CONSULTANT or of any subconsultant(s), regardless of his/her position, is to personally benefit directly or indirectly from the performance of the SERVICES or from any knowledge obtained during the CONSULTANT'S execution of this CONTRACT.

ARTICLE XXIII. AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the LPA to proceed under this CONTRACT is conditioned upon the availability of funds, the appropriation of funds by the Mississippi Legislature, and the receipt of state and/or federal funds. If, at any time, the funds anticipated for the fulfillment of this CONTRACT are not forthcoming or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the LPA for the performance of this CONTRACT, the LPA shall have the right, upon written notice to the CONSULTANT, to immediately terminate or stop work on this CONTRACT without damage, penalty, cost, or expense to the LPA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

ARTICLE XXIV. STOP WORK ORDER

A. **Order to Stop Work.** The LPA may, by written order to the CONSULTANT at any time, and without notice to any surety, require the CONSULTANT to stop all or any part of the work called for by this CONTRACT. This order shall be for a specified period not exceeding twenty-four (24) months after the order is delivered to the CONSULTANT unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the CONSULTANT shall forthwith comply with its terms and take all steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the LPA shall either:

- (1) cancel the stop work order; or
- (2) terminate the work covered by such order according to and as provided in Article III of this CONTRACT.

Prior to the LPA'S taking official action to stop work under this CONTRACT, the Executive Director of MDOT and/or the LPA may notify the CONSULTANT, in writing, of the MDOT or the LPA's intentions to ask the LPA or CONSULTANT to stop work under this CONTRACT. Upon notice from the Executive Director of MDOT or the LPA, the CONSULTANT shall suspend all activities under this CONTRACT, pending final action by the LPA.

B. **Cancellation or Expiration of the Order.** If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONSULTANT shall have the right to resume work. If the LPA decides that it is justified, an appropriate adjustment may be made in the delivery schedule. If the stop work order results in an increase in the time required for or in the CONSULTANT'S cost properly allocable to the performance of any part of this CONTRACT and the CONSULTANT asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage, an equitable adjustment in this CONTRACT may be made by written modification of this CONTRACT as provided by the terms of this CONTRACT.

C. **Termination of Stopped Work.** If a stop work order is not canceled and the work covered by such order is terminated, the CONSULTANT may be paid for services rendered prior to the Termination. In addition to payment for services rendered prior to the date of termination, the LPA shall be liable only for the costs, fees, and expenses for demobilization and close out of this CONTRACT, based on actual time and expenses incurred by the CONSULTANT in the packaging and shipment of all documents covered by this CONTRACT to the LPA. In no event shall the LPA be liable for lost profits or other consequential damages.

ARTICLE XXV. KEY PERSONNEL & DESIGNATED AGENTS

CONSULTANT agrees that Key Personnel identified as assigned to this PROJECT shall not be changed or reassigned without prior approval of the LPA or, if prior approval is impossible, and then notice to the LPA and subsequent review by the LPA which may approve or disapprove the action. For purposes of implementing this section and all other sections of this CONTRACT with regard to notice, the following individuals are herewith designated as agents for the respective parties unless otherwise identified in the addenda hereto:

LPA:

For Contractual Matters:

Clovis Reed
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525
Phone: 228.222.4626
Fax: 228.222.4390
creed@diamondhead.ms.gov

For Technical Matters:

Clovis Reed
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525
Phone: 228.222.4626
Fax: 228.222.4390
Fax: 228.222.4390

CONSULTANT:

For Contractual Matters:

Karen Sites
MS Engineering and Development, LLC
7604 Fairway Drive
Diamondhead, MS 39525
Phone: 228.265.4726
Fax: 228.255.9360
ksites@msedllc.com

For Technical Matters:

Karen Sites
MS Engineering and Development, LLC
7604 Fairway Drive
Diamondhead, MS 39525
Phone: 228.265.4726
Fax: 228.255.9360
ksites@msedllc.com

Licensure Number
from the Mississippi
Board of Licensure
for Professional
Engineers and Surveyors:

P.E. # 19349
Surveyor # _____

Licensure Number
from the Mississippi
Board of Licensure
for Professional
Engineers and Surveyors:

P.E. # 19349
Surveyor # _____

ARTICLE XXVI. AUTHORIZATION

Both parties hereto represent that they have authority to enter into this CONTRACT and that the individuals executing this CONTRACT are authorized to execute it and bind their respective parties and certified copies of the applicable LPA Order and the Resolution of the Corporate Board of Directors of the CONSULTANT are attached hereto as "Exhibit 1" and incorporated herein by reference and made a part hereof as if fully copied herein in words and figures.

WITNESS this my signature in execution hereof, this the ____ day of _____, 20__.

City of Diamondhead

Clovis Reed, City Manager

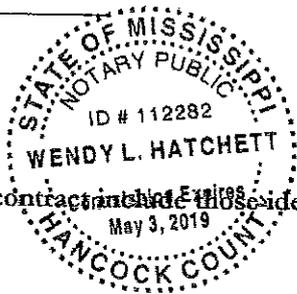
WITNESS this my signature in execution hereof, this the 7th day of Nov., 2016.

MS Engineering and Development, LLC

BY: *Karen Sites*
Karen Sites, President

ATTEST: *Wendy Hatchett* *notary*

Exhibits attached hereto and incorporated by reference into this contract include those identified on the attached page entitled "List of Exhibits".



LIST OF EXHIBITS

1. Evidence of Authority
2. Scope of Work
3. Fees and Expenses.
4. Sample Invoice
5. Notice to the CONSULTANT
6. CONSULTANT's Certification Regarding Debarment, Suspension and Other Responsibility Matters.
7. Certification of LPA
8. *{This Exhibit was intentionally left blank}*
9. Prime Consultant EEV Certification and Agreement

EXHIBIT 1

Copy of authority to execute contracts on behalf of the LPA

Copy of authority to execute contracts on behalf of the Consultant Corporation here

RESOLUTION AUTHORIZING THE CITY MANAGER OF THE CITY OF DIAMONDHEAD, MISSISSIPPI (THE "CITY), TO BE THE POINT OF CONTACT WITH RESPECT TO GRANTS AND AGREEMENTS AND GRANTING THE CITY MANAGER AUTHORITY TO SIGN ALL GRANT AND CONTRACT DOCUMENTS ON BEHALF OF THE CITY

WHEREAS, the City has sought various grant opportunities and entered into various contracts and agreements; and

WHEREAS, such grants, agreements, and contracts often require that the City execute documents; and

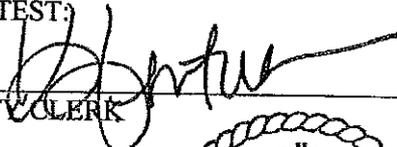
WHEREAS, the City Council, in order to effectively manage its obligations with respect to such grants, agreements, and contracts, will require one point of contact.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY, that the City does hereby authorizes its City Manager, Clovis Reed, to act as the point of contact with respect to grants, agreements, and contracts, and further authorizes the City Manager, Clovis Reed, to execute any and all documents necessary with respect to said grants, agreements, and contracts upon approval of the council.

I hereby certify that above and foregoing resolution was introduced by Councilmember Woolbright seconded by Councilmember Lopez and the question being put to a roll call vote, the result was as follows:

	Aye	Nay	Absent
Councilmember Knobloch	✓	—	—
Councilmember Woolbright	✓	—	—
Councilmember Lopez	✓	—	—
Councilmember Rech	✓	—	—
Councilmember Sislow	✓	—	—
Mayor Schafer	✓	—	—

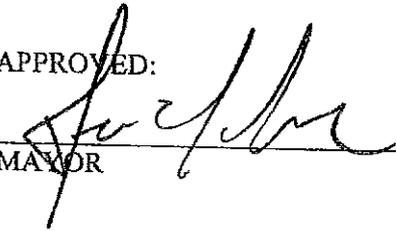
ATTEST:


CITY CLERK

(SEAL)



APPROVED:


MAYOR

AFFADAVIT OF SIGNATURE AUTHORITY

BACKGROUND:

MS Engineering and Development, LLC (the "Corporation") is a Limited Liability Corporation organized and operating under the laws of the State of Mississippi.

LET IT BE RESOLVED THAT:

As sole proprietor of said Corporation, **Karen J. Sites** is the only person authorized to sign any contracts, amendments to contracts, or other such documents, and to review claims on behalf of MS Engineering and Development, LLC.

Dated in the State of Mississippi on the 2nd day of November, 2016.



Karen Sites, President

SWORN TO AND SUBSCRIBED before me on this 2nd day of November, 2016.





NOTARY PUBLIC

My Commission Expires: May 3, 2019

EXHIBIT 2
SCOPE OF WORK

This CONSULTANT shall provide all necessary professional services required to complete environmental studies ENV-160, all necessary field surveying, and roadway hydraulic design for the preparation of construction plans. The project location for these services includes Sidewalk Improvements along Golf Club Drive from Diamondhead Drive East to Country Club Circle, bike racks and covered bus stops at five other areas throughout the City of Diamondhead including signage and pavement markings in Hancock County as detailed below.

The CONSULTANT shall prepare all plans, specifications, and provide a State Estimate (PS&E Assembly) as indicated in the LPA Project Development Manual.

The following engineering services shall be performed by the CONSULTANT on behalf of the Local Public Agency (LPA) in accordance with this CONTRACT at the direction of the LPA, unless otherwise modified by the Mississippi Department of Transportation (MDOT).

Project Description:

This project shall include the following:

1. Installation of sidewalks along Golf Club Drive, from the intersection of Golf Club Drive and Diamondhead Drive East to the Diamondhead Country Club Entrance;
2. Construction of Bus Stop Shelters and Bike Racks placed at various locations throughout the City;
 - a. Intersection of Bayou Drive and Diamondhead Drive West
 - b. Diamondhead North Rec Center
 - c. Diamondhead East Rec Center
 - d. Intersection of Noma Drive and Oaks Blvd.
 - e. Intersection of Ahui Street and Golf Club Drive
 - f. Intersection of Golf Club Drive and Country Club Circle
3. New pavement markings and signs will be installed to promote the existing "Shared Lanes" on Diamondhead Drives East, West, and North, approximately 7 miles in length;
4. No work will be completed outside of the existing Right-of-Way;
5. The areas of construction are not located within a flood zone and it is anticipated no wetlands will be disturbed;
6. Based on analyses of existing data discovered through the topographic survey, any existing ditch lines impacted by construction will require the installation of drainage structures at the proposed sidewalk location. Sizes and locations will be determined per the hydraulic analyses.
7. ADA Compliance will be required for all aspects of the project.
8. All areas exist within previously developed sites.

9. Surveying and engineering design shall be completed using AutoCad compatible software. Deliverables shall be in a dwg format. Surveying data shall conform to local standards.

A project schedule is required. Work progression is to proceed in accordance with the attached agreed project schedule. The following engineering services shall be performed by the CONSULTANT in accordance with this CONTRACT and the latest Project Development Manual (PDM) for the LPA at the time of the execution of this contract. Where this CONTRACT and the PDM differ, the PDM shall govern.

A monthly status report along with an updated project schedule is required. This report is to be submitted by the 7th of each month to the LPA for their signature and then submitted to the District LPA Coordinator. This monthly report is to be submitted by the CONSULTANT and will update the LPA on the status of the project. Recent milestones in plan development, such as the submittal of plans for review, shall be documented. Also, the target dates for the future milestones should be included.

Surveys shall at all times comply with the following:

1. MDOT Survey Manual;
2. Mississippi Board of Registration for Professional Engineers and Land Surveyor's "Standards of Practice for Surveying" in Mississippi. All traverses and right of way monument locations (being set) shall meet with Class "A" of the standards of practice specifications and traverses shall be properly adjusted according to good surveying practices. Side ties or other locations of improvements or features shall meet the class specification normally required by said minimum standards;
3. Land Surveying laws as defined in the Mississippi Code of 1972 as well as current case law including interpretations of those laws by the judicial branches of the United States and State of Mississippi governments;
4. Local Zoning and Subdivision laws and regulations in the project area. (Properties falling within the required right of way are not subject to these regulations. However, the remainder portion of the original tract may be affected by the MDOT acquisitions.); and
5. Specific instructions as required by the Mississippi Department of Transportation on individual Projects.

TYPICAL ITEMS/MATERIALS PROVIDED BY THE LPA:

Based upon availability, the LPA will provide within normal resources of the LPA, the following:

1. Maps, aerial photographs, and other cartographic items as may be available;
2. Available old construction plans, drawings, and maps pertinent to the project;
3. Available traffic growth rates, design and peak hour factors;
4. Copies of the MDOT publications, regulations, and standards, as applicable;

5. Copies of previous studies/analyses, environmental assessments, conceptual plan, and other information pertaining to the project;
6. Names, addresses, and telephone numbers of points of contact which may prove useful to the CONSULTANT in conducting this analysis;
7. A single point of contact within the LPA for day-to-day coordination of each CONTRACT;
8. Special provisions, interim standard specifications, and pay item numbers that are presently being utilized by the MDOT that are not shown in the MDOT Standard Specification book;
9. Computer files (depending on availability) may include Computer Aided Design and Drafting (CADD) files, GIS data, or Survey Control Points set by other Surveyors on or near the project employed by the LPA;
10. Geotechnical Report, if required.

GENERAL REQUIREMENTS:

As directed, the CONSULTANT shall provide engineering/technical assistance to perform specific assignments requiring needed expertise or staff resources unavailable to the LPA.

Manuals, guides, and specifications applicable to this CONTRACT shall be those approved and adopted by the MDOT and in effect on the effective date of this CONTRACT unless otherwise specified in the CONTRACT or subsequently directed by the MDOT during the course of this CONTRACT.

The design of sidewalks, pavement markings, and signage shall be in compliance with the MDOT Roadway Design Manual, and supplemented with updated design policies as described in design memos located on the MDOT Roadway Design Division's File Transfer Protocol (FTP) site, American Association of State Highway and Transportation Officials (AASHTO)'s Policy on Geometric Design Of Highways and Streets; MDOT Standard Drawings (roadway and bridge), MDOT Standard Specifications for Road and Bridge Construction; Manual on Uniform Traffic Control Devices (MUTCD); and MDOT Access Management Policy. The latest edition of the aforementioned documents shall be used. Bus shelters shall be in compliance with all federal, state, and local regulations that address these types of structures.

Hydraulic design shall conform to the MDOT's Roadway Design Manual, 23 CFR 625, 630 AND 650, 44 CFR Part 60.3(d)(3), the Floodplain Management Regulations for the State of Mississippi (Chapter 5, General laws of 1979, 1st Extraordinary session of the State, as amended) and Federal Emergency Management Agency (FEMA) regulations and any other State or Federal regulations as appropriate.

This project shall be performed using English units, unless stated otherwise by the MDOT.

The CONSULTANT shall not begin work in any phase of this CONTRACT until a written NOTICE TO PROCEED (NTP) for that individual phase has been issued. The LPA reserves the right to not issue a NTP until work in the previous phase has been completed.

For other type contract plans sheets:

All preliminary plans shall be marked "PRELIMINARY, NOT FOR CONSTRUCTION" on each sheet. Once plans are complete, the "PRELIMINARY" markings shall be removed, and the Title sheet shall be signed and sealed/stamped by the CONSULTANT's engineer. If the scope of the CONSULTANT's work is limited to certain aspects of the plans, the scope shall be briefly noted near the seal/stamp (e.g., "ROADWAY AND LIGHTING ONLY" or "BRIDGE AND RETAINING WALL ONLY"). If multiple CONSULTANTS develop the plans, each firm shall sign and seal/stamp the title sheet.

It is the responsibility of the CONSULTANT to request and receive approval from the LPA's Project Manager prior to making any changes to plans developed under this contract. This requirement includes plans developed by any subconsultants.

At a minimum, the Scope of Work shall be divided into two phases as follows:

FIELD REVIEW PLANS

- Part 1 -- Pre-Design Conference
- Part 2 -- Conceptual Plans
- Part 3 -- Preliminary Plans
- Part 4 -- Hydraulic Design
- Part 5 -- Field Inspection Plans

OFFICE REVIEW PLANS

- Part 1 -- Design Conference
- Part 2 -- Office Review Plans
- Part 3 -- Final Contract Plans

ENVIRONMENTAL STUDIES:

A. GENERAL:

The CONSULTANT will perform Engineering and environmental assessments and prepare the ENV-160 Document in accordance with requirements of this Project.

FIELD SURVEY:

The CONSULTANT shall survey the project utilizing standard surveying practices as required to prepare preliminary and final contract plans in accordance with the current MDOT Design Manual. The work shall be performed in accordance with any additional instructions or requests as specified by the LPA, including the following:

A. Centerline Survey and Control:

1. Document "good faith" efforts to notify the property owners prior to entering upon the property for survey purposes;
2. Establish horizontal and vertical control, intermediate control and;
3. Perform complete topographic survey;
4. By the time Preliminary plans are developed, the CONSULTANT will be required to determine ownership from deeds of record, and develop a Property Map of the project according to standard, recognized surveying procedures meeting the Mississippi Board's "Standards of Practice" for surveying in the State of Mississippi as set forth and published by the State Board of Licensure for Professional Engineers and Surveyors. The following are required MDOT elements:
 - a) Existing local road ROW and utility ROW that fall within the topographic limits of the project shall be collected based on field observation and/or plats;
 - b) Each land parcel boundary in or connecting to the limits of the project shall be drawn and the boundary lines delineated as; from evidence, deed or plat. Each individual parcel to be labeled with the following: owner name and tax parcel number. All GLO lines intersecting the project labeled with appropriate Section, Township, and Range information. Lot and block or tract numbers of property and adjoining lots of Subdivisions;
 - c) All corners and evidence found shall be labeled with coordinates and the description of the evidence found. It shall not be necessary to show station/offset to any corners or to property lines at their intersection with the existing centerline. No ROW markers or property corners symbology shall be shown unless they are collected in the field;
 - d) Any distances or bearings shown on this drawing shall be grid; and
 - e) North arrow.
5. In the case of any discrepancy or ambiguity between, the Mississippi Board's "Standards of Practice" or specifications listed within this CONTRACT, the CONSULTANT shall adhere to the most stringent requirement for the specific task in question, unless otherwise directed in writing by a representative of the MDOT authorized to make alterations to this CONTRACT; and
9. The location of any utility shall be delineated.

SURVEY DATA SUBMITTAL:

At the end of Conceptual Design, the CONSULTANT shall submit two copies of a CD containing the following information (This is in addition to the CADD files required to be submitted):

- a) An ASCII file containing the horizontal and vertical control point information established by the consultant. Naming of the file shall be firm's name_fms#_detail code#_Control.txt. File format shall be point number, northing, easting, elevation, and point description.
- b) An ASCII file containing all topographic points collected for the project. Naming of the file shall be firm's name_fms#_detail code#_topo.pdf. File format shall be point number, northing, easting, elevation, point code, line code: point description.

FIELD REVIEW PLANS:

Plans shall conform to the MDOT Roadway Design Division's CADD specifications as described in the MDOT Roadway Design Division's CADD User's Manual. When field inspection plans are submitted, all hydraulic calculations (for drainage areas under 1000 acres) shall be included.

Unless stated otherwise in the CONTRACT, the following specific requirements are typical for this phase:

Part 1 - PRE-DESIGN CONFERENCE

The purpose of the conference is to discuss LPA procedures, contract administration, data required by this CONTRACT, the design criteria, and other matters as the parties deem necessary. After the Pre-Design Conference, the Project Director shall authorize the CONSULTANT to proceed with the preparation of the conceptual design plans.

Part 2 - CONCEPTUAL PLANS

The CONSULTANT shall prepare and submit conceptual plans for the project to include, where applicable:

- A. **PLANS:** Title Sheet(s), typical sections, plan-profile sheets, traffic control sheets, conceptual permanent directional signing layout sheets, conceptual pavement marking sheets, special design sheets where needed, phase construction sheets as required (plan & elevation) and ROW limits with or without property boundaries.

Four (4) sets of conceptual plans shall be submitted to the MDOT and the LPA for review and approval. Allow approximately three (3) weeks for review by the MDOT and the LPA.

Part 3 - PRELIMINARY PLANS

The CONSULTANT shall prepare and submit Preliminary Plans in accordance with the LPA's format based on the approved conceptual plan. The Preliminary Plans shall contain the title sheet, typical sections, and plan and profile sheets showing all geometrics, profile grades, and construction limits.

Part 4 – HYDRAULIC DESIGN

Hydraulic design including hydrology, channels, culverts, energy dissipaters, storm drainage systems, and storage facilities shall be in conformance with the MDOT Roadway Design Manual, AASHTO Drainage Manual, FHWA Hydraulic Engineering Circulars and Publications, 23 CFR 625, 630 and 650, 44 CFR Part 59-78, the Floodplain Management Regulations for the State of Mississippi (Chapter 5, General Laws of 1979, 1st Extraordinary Session of the State, as amended and supplemented from time to time), National Flood Insurance Program (NFIP) regulations, and Federal Emergency Management Agency (FEMA) regulations and any other applicable Laws.

Drainage design should achieve the most effective and economical methods by which runoff waters can be passed through and removed from the roadway. Drainage installations should not create hazardous conditions for traffic operations nor should they adversely affect conditions of adjoining properties.

Major reference publications (latest editions and interim revisions) for hydraulic design of highways are as follows (but not limited to):

1. FHWA Publication *Hydraulic Design of Highway Culverts*, Hydraulic Design Series Number 5 (HDS-5)
2. FHWA Publication *Hydraulic Design of Energy Dissipators for Culverts and Channels*, Hydraulic Engineering Circular No. 14 (HEC-14).
3. FHWA Publication *Design of Roadside Channels with Flexible Linings*, Hydraulic Engineering Circular No. 15 (HEC-15).
4. FHWA Publication *Urban Drainage Design Manual*, Hydraulic Engineering Circular No. 22 (HEC-22).

The hydraulic analysis shall be performed using a nationally recognized and readily available computer program for determination of design requirements. Acceptable software for drainage design applications may include HY-8 Culvert Hydraulic Analysis Program, FHWA Hydraulic Toolbox, HEC-RAS, PondPack, StormCAD, StreamStats, HEC-HMS, WMS, and SMS.

- A. STORM SEWER DESIGN: Storm sewer design shall be prepared according to the MDOT Roadway Design Manual and FHWA Publication *Urban Drainage Design Manual*, Hydraulic Engineering Circular No. 22 (HEC-22). Recommendations shall be provided in the appropriate format as required.
- a) Design data for structures shall be recorded and provided in a separate table or plan view showing every structure with drainage area and flow rate into the structure.
 - b) Drainage details shall be provided in an AutoCad or equivalent file including but not limited to hydraulic structure recommendations placed accordingly on the roadway 1"=20' Plan & Profile sheets (left and right) for reference into the plans. The following shall be provided as a minimum:
 - i. Plan view shall show all structures in the proper location, and include corresponding labels as to size and type. Pipes shall also be labeled including a direction of flow.
 - ii. Profile view shall show the structures in the proper location, and drawn to proper flow lines and dimensions. Pipe slopes shall be labeled. Profile view shall also include the existing and proposed roadway profile provided by Roadway Design.

- iii. Drainage Details Note box including information to be placed by Roadway Design or the CONSULTANT in the profile for each structure (pipe or box culvert).
 - c) Structure information shall include but not limited to location including station, type, size, length, top, height, width, drainage area, flowlines, skew, inverts, and openings with pipe size and any other accompanying structures (end sections, junction boxes, collars, etc). The accompanying structures should also include flowlines and dimensions where applicable.
 - d) All structures shall be drawn to proper flowlines, dimensions and labeled in the cross section file provided by Roadway Design
- B. HYDRAULIC MODELS AND CALCULATIONS: Hydraulic models shall be provided when required. Input and output from software and any other calculations used in hydraulic design shall be provided.
- C. HYDRAULIC REPORT: Hydraulic reports shall be provided when required, and shall be signed and sealed by the CONSULTANT's engineer.

Part 5 - FIELD INSPECTION PLANS

The CONSULTANT shall prepare and submit field inspection plans in accordance with the LPA'S format based on the approved conceptual plan. The field inspection plans shall contain, as a minimum:

- A. PLANS: Title sheet, typical sections, preliminary listing of pay items, plan and profile sheets showing all geometrics, profile grades, construction limits, preliminary earthwork quantities, preliminary permanent directional signing layout sheets, preliminary pavement marking sheets, size and location of all drainage structures, as well as any traffic control that will be required during construction.

After the field review is conducted, the CONSULTANT shall provide the LPA with written updated construction cost estimates. These estimates shall be based on historical cost data from similar MDOT projects.

- B. Any other incidental drawings needed to show pertinent topographical features or special treatments shall be included with these field inspection plans. The CONSULTANT shall submit four (4) sets of plans for review by the LPA prior to requesting the Field Inspection. The LPA shall mark on these copies of the plans all revisions or changes required and return same to the CONSULTANT. Allow approximately three (3) weeks for review by the LPA. After completing any revisions, the CONSULTANT shall submit to the LPA one (1) set of Field Inspection plans for a Field Inspection with representatives of the LPA and the CONSULTANT at a date mutually agreed upon by both parties. Allow approximately three (3) weeks from the submittal date of the reproducibles for scheduling and completing the Field Inspection.

OFFICE PLANS:

This work shall consist of all services required for the production of final contract plans.

Roadway plans shall conform to Roadway Design Division's CADD specifications as described in Roadway Design Division's CADD USER'S MANUAL. When Field Inspection plans are submitted, all hydraulic calculations (for drainage areas under 1000 acres) shall be included.

Unless stated otherwise in the CONTRACT, the following specific requirements are typical for this phase:

Part 1 - DESIGN CONFERENCE

The purpose of the Design Conference is to discuss any updated procedures or policies the LPA may have enacted that would impact the final design phase of the project. These items would not be considered extra work but would help to minimize the number of corrections that are generated at the Office Review stage. The design conference may also require a visit to the project site.

Part 2 - OFFICE REVIEW PLANS

After the Office Review plans (100% plan development, pending final review) are complete, the CONSULTANT shall submit one (1) set of reproducible plans and quantity calculations in 8.5"x11" format for review by the LPA. A pdf file of the quantity calculations shall also be submitted. A final Office Review will be required and the CONSULTANT shall be required to attend. Allow approximately three (3) weeks from the submittal date of the reproducibles for scheduling and completing the Office Review. In the office review, the LPA shall review and mark the plans with all required revisions.

After the Office Review is conducted, the CONSULTANT shall provide the LPA with a written updated construction cost estimate. This estimate shall be based on the plan quantities and historical cost data for the pay items.

Part 3 - FINAL CONTRACT PLANS

The final contract plans shall include all items required in the final right-of-way plans and all other information such as, but not limited to:

A. ROADWAY PLANS:

Title sheet; detailed index; general notes; typical sections; summary of quantities; estimated quantities; plan-profile sheets; special design sheets; traffic control plan; complete form grades for interchange ramps, loops, and channelized intersections (in accordance with current Design Manual, at 25 feet intervals); permanent directional signing sheets that include layouts, details (signs and overhead assemblies), and estimated quantities; detailed pavement marking sheets; Right-of-Way Coordinate Sheet(s), final cross-sections; and all notes and data used to develop the plans.

B. PERMANENT SIGNING PLANS AND DETAILS:

Permanent signing plans and details for new construction projects shall be developed in accordance with the requirements of the MUTCD, MDOT signing policies and practices and

at the direction of the Roadway Design Division Engineer, while in consultation with the Traffic Engineering Division.

C. OTHER RELATED TRAFFIC/DESIGN SERVICES:

When directed by the LPA, the CONSULTANT shall develop a Work Zone Transportation Operations (TO) Plan to mitigate the impacts of the work zone on the operation and management of the transportation system within the work zone impact area.

D. SUBMITTAL:

Unless otherwise specified in the CONTRACT, after all revisions have been made, the CONSULTANT shall submit the final contract plans including all survey notes, design, special provisions, estimates of cost and revised quantity computations (2 sets), and all notes or other data used in development of the plans including Raw Data and ASCII coordinate files. The design computations shall be legible, neat and orderly, and properly identified and referenced. All analysis computations and pertinent sketches are understood to be part of the design computations.

The final contract plans shall be accompanied by a written certification and completed checklist from the CONSULTANT that a detailed check of the plans, including quantity computations, has been made prior to submission. The CONSULTANT shall submit a list of all comments, the resolution to the comments, and one (1) PDF scan of the marked-up plans used to complete the CONSULTANT's internal quality control review to confirm that a detailed review has been performed by the CONSULTANT prior to final contract plans submittal. The plans may not be accepted without this written certification and completed checklist.

Final contract plans shall be submitted as original drawings.

All related electronic files shall be submitted with original drawings on CD/DVD with a project description (including Project Number, Route, and County) and the words "Final Plans," and the date written on the exterior of the disk. In lieu of CD/DVD, the CONSULTANT may transmit the files by FTP or e-mail. The electronic CADD files may be in a compressed (zipped) format.

The CONSULTANT shall prepare all special provisions pertinent to the intent of the plans unless the LPA has on hand suitable special provisions that will be used.

ADVERTISEMENT:

The Consultant shall prepare legal advertisement for the referenced project and shall ensure the project follows the LPA Project Development Manual and is properly advertised per Mississippi State bidding laws and regulations. These services include the following:

- Preparing the advertisement
- Bidder Coordination
- Receive and evaluate bids
- Assemble Bids and Submit

EXHIBIT 3

FEES AND EXPENSES

The LPA shall pay the CONSULTANT on an actual cost-plus fixed-fee with an upset limit for the satisfactory completion of the Scope of Work set forth under "Exhibit 2", hereto, for all salaries, payroll additives, overhead, direct costs and CONSULTANT's fixed fees attributable to this CONTRACT.

Actual costs as the term is used herein shall include all direct salaries, payroll additives, overhead and direct cost. Direct salaries are those amounts actually paid to the person performing the SERVICES which are deemed reasonably necessary by the LPA for the advancement of the Scope of Work. Overtime work is not contemplated by this contract. Accordingly, direct salaries chargeable to this contract shall not include any overtime premium. Salaries for officers, principals or partners shall not increase at a rate in excess of that for other employees. Payroll additives and overhead consist of employee fringe benefits and that part of CONSULTANT's allowable indirect costs attributable to this contract. Direct Costs are those charges deemed reasonably necessary by the LPA for the successful completion of the Scope of Work which are charged directly to the project and not included in overhead.

Fixed fee as the term is used herein shall mean a dollar amount established to cover the CONSULTANT's profit and business expenses not allocable to overhead for the successful completion of the SERVICES.

Each month, the CONSULTANT shall submit OCR-484-C found on MDOT's website to the LPA along with the Invoice. This form certifies payments to all Subconsultants and shows all firms even if the CONSULTANT has paid no monies to the firm during that estimate period (negative report).

SCHEDULE OF MAXIMUM RATES, EXPENSES & FEES:

The following schedule of rates for services will not be exceeded for all work under this CONTRACT:

Direct Salaries:

Direct salaries shall not exceed those amounts actually paid to an employee performing services reasonably necessary for the completion of the Scope of Work set forth under "Exhibit 2" to this CONTRACT.

Upon MDOT's or LPA's request, all charges for services must be substantiated by supporting data, i.e. certified time sheets, daily logs, check stubs, pay vouchers, etc.

Payroll Additive & Overhead:

The current overhead rates shall be submitted by the CONSULTANT and approved by the MDOT within nine (9) months of the end of the CONSULTANT's fiscal period. The current overhead rate, as defined in this CONTRACT, shall be the overhead rate for the CONSULTANT's most recent previous fiscal period. The CONSULTANT's failure to provide a current overhead rate within nine (9) months of the end of the CONSULTANT's fiscal period may result in the CONSULTANT being deemed ineligible for any potential Supplemental Agreements with the LPA. The estimated FCCM for cost proposals, Supplemental Agreements, and invoices must be specially identified and distinguished from the other costs. Profit/Fee shall not include amounts applicable to FCCM.

Final payment of the overhead rate costs shall be adjusted after completion of the final audit to reflect the actual rates experienced by the CONSULTANT during the course of this CONTRACT; however, in no event shall such an adjustment allow this CONTRACT'S cost to exceed the maximum limitation stated. Said audit of

the CONSULTANT will be conducted by the LPA, or the LPA'S designated auditor at the conclusion of the CONTRACT in accordance with Federal and the LPA requirements.

All overhead rates submitted to MDOT for approval shall comply with the AASHTO Audit Guide, latest edition, as amended. In addition, the CONSULTANT shall submit written certification in accordance with FHWA Order 4470.1A, as amended, that the indirect cost rate submitted does not include any costs which are expressly unallowable and the indirect cost rate was established only with allowable costs in accordance with the applicable cost principles contained in the Federal Acquisition Regulations (FAR) of 48 CFR part 31.

Direct Costs:

The LPA will reimburse the CONSULTANT'S actual documented expenses; or the amount allowable under the current edition of the MDOT State Travel Handbook, whichever is lower. Except as otherwise specifically provided herein, the procedures generally outlined in the MDOT State Travel Handbook shall govern the allowability of any expense reimbursement. (i.e. no meal reimbursement when there is no overnight stay).

All direct costs (except meals) must be substantiated by supporting data, i.e. mileage, log books, receipts, etc.

All other expenses will be reimbursed upon receipt of acceptable paid invoices.

Fixed Fee:

The CONSULTANT'S fixed fee shall be \$ 3,182.76, which sum shall be paid incrementally each month in an amount determined by multiplying the total fixed fee by the project completion percentage, less any amounts previously paid for fixed fees.

Contract Maximums:

Under no circumstances shall the amount payable by the LPA for this assignment exceed \$ 36,703.80 (Total of all Charges) without the prior written consent of both parties.

FEE AND EXPENSE SUMMARY

	Primes Labor Cost & Overhead	Primes Direct Costs	Primes Fixed Fee	Sub-Consultants	Project Total
Project Total	\$26,523.00	0.00	\$3,182.76	\$6,998.04	\$36,703.80

****See Delineation of Cost Breakdown behind Exhibit 9.**

SUPPORTING DATA

Project No.

000000-000000LPA

County

<u>Employee and Classification</u>	<u>Current Rate of Pay</u>	<u>Current Period Hours</u>	<u>Previous Period Costs</u>	<u>Current Period Costs</u>	<u>Costs To Date</u>
DIRECT LABOR AND DIRECT COSTS					
John P. Public, Jr Engineer	0.00	0.00	0.00	0.00	0.00
John P. Public, Jr Engineer	0.00	0.00	0.00	0.00	0.00
John P. Public, Jr Engineer	0.00	0.00	0.00	0.00	0.00
John P. Public, Jr Engineer	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Sub Total		0.00	0.00	0.00	0.00
Payroll Additives (minus FCCM)			<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Total Labor			0.00	0.00	0.00
Fixed Fee			0.00	0.00	0.00
Payroll additives w/ only FCCM (Direct Labor * FCCM)			0.00	0.00	0.00
Direct Costs			<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Project Total			0.00	0.00	0.00

EXHIBIT 5

NOTICE TO CONTRACTORS, FEDERAL-AID CONTRACT COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 COPELAND ANTI-KICKBACK ACT, DAVIS BACON ACT CONTRACT WORK HOURS AND SAFETY STANDARDS ACT CLEAN AIR ACT, ENERGY POLICY AND CONSERVATION ACT DISADVANTAGED BUSINESS ENTERPRISES, WORKER VISIBILITY

During the performance of this CONTRACT, the CONSULTANT, for itself, its assignees and successor-in-interest (hereinafter referred to as the "CONSULTANT") agrees as follows:

1. Compliance with Regulations: The CONSULTANT will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this CONTRACT.

2. Nondiscrimination: The CONSULTANT, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the grounds of race, religion, color, sex, national origin, age or disability in the selection and retention of subconsultants including procurement of materials and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the CONTRACT covers a program set forth in Appendix B of the Regulations. In addition, the CONSULTANT will not participate either directly or indirectly in discrimination prohibited by 23 C.F.R. 710.405(b).

3. Solicitations for Subcontracts. Including Procurement of Materials and Equipment: In all Solicitations, either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurement of materials or equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this CONTRACT and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, national origin, age or disability.

4. Anti-kickback provisions: All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The CONSULTANT shall report all suspected or reported violations to the LPA.

5. Davis Bacon Act: When required by the federal grant program legislation, all construction contracts awarded to contractors and subcontractors in excess of \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week.

6. Contract Work Hours and Safety Standards Act: Where applicable, all contracts awarded by or to contractors and subcontractors in excess of \$100,000 which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on

the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. 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 purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

7. Clean Air Act: Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts and subcontracts in amounts in excess of \$100,000).

8. Energy Policy and Conservation Act: 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 (Pub. L. 94-163).

9. Disadvantaged Business Enterprises: It is the policy of the Mississippi Department of Transportation to comply with the requirements of 49 C.F.R. 26, to prohibit unlawful discrimination, to meet its goal for DBE participation, to meet that goal whenever possible by race-neutral means, to create a level playing field, and to achieve that amount of DBE participation that would be obtained in a non-discriminatory market place. To meet that objective in any United States Department of Transportation assisted contracts, the LPA and the CONSULTANT shall comply with the "Mississippi Department of Transportation's Disadvantaged Business Enterprise Programs For United States Department Of Transportation Assisted Contracts".

Neither the CONSULTANT (Contractor), nor any sub-recipient or sub-contractor shall discriminate on the bases of race, color, national origin, or sex in the performance of this contract. The CONSULTANT (Contractor) shall carry out applicable requirements of 49 C.F.R. 26 in the award and administration of United States Department of Transportation assisted contracts. Failure of the CONSULTANT (Contractor) to carry out those requirements is a material breach of the contract which may result in the termination of this contract or such other remedies as the Mississippi Department of Transportation deems appropriate.

10. Worker Visibility: All workers within the right-of-way of a Federal-aid highway who are exposed either to traffic (vehicles using the highway for the purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel -- personal protective safety clothing that is intended to provide conspicuity during both daytime and nighttime usage, and that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear" -- for compliance with 23 CFR, Part 634.

EXHIBIT 6

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - Certification in accordance with Section 29.510 Appendix A, C.F.R./Vol. 53, No. 102, page 19210 and 19211:

- (1) The CONSULTANT certifies to the best of its knowledge and belief that it and its principals:
 - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - (b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;
 - (d) have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default; and
 - (e) has not either directly or indirectly entered into any agreement participated in any collusion; or otherwise taken any action in restraint of free competitive negotiation in connection with this CONTRACT.

- (2) The CONSULTANT further certifies, to the best of his/her knowledge and belief, that:
 - (a) No federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or employee of a member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; and
 - (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or any employee of a member of Congress in connection with this CONTRACT, Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions will be completed and submitted.

The certification contained in (1) and (2) above is a material representation of fact upon which reliance is placed and a pre-requisite imposed by Section 1352, Title 31, U. S. Code prior to entering into this CONTRACT. Failure to comply shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000. The CONSULTANT shall include the language of the certification in all subcontracts exceeding \$100,000 and all sub-contractors shall certify and disclose accordingly.

I hereby certify that I am the duly authorized representative of the CONSULTANT for purposes of making this certification, and that neither I, nor any principal, officer, shareholder or employee of the above firm has:

- (a) employed or retained for commission, percentages, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; or
- (b) agreed, as an express or implied condition for obtaining this CONTRACT, to employ or retain the services of any firm or person in connection with carrying out the agreement; or
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the agreement; except as herein expressly stated (if any).

I acknowledge that this Agreement may be furnished to the Federal Highway Administration, United States Department of Transportation, in connection with the Agreement involving participation of Federal-Aid Highway funds, and is subject to applicable state and federal laws, both criminal and civil.

SO CERTIFIED this 2nd day of November, 2016.

MS Engineering and Development, LLC

BY: *Karen Sites*
Karen Sites, President

ATTEST: *Wendy Hatchett*
My Commission Expires: *May 3, 2019*

Wendy Hatchett
Notary


EXHIBIT 8

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EXHIBIT 9

PRIME CONSULTANT / CONTRACTOR EEV CERTIFICATION AND AGREEMENT

By executing this Certification and Agreement, the undersigned verifies its compliance with the, "Mississippi Employment Protection Act," Section 71-11-3 of the Mississippi Code of 1972, as amended, and any rules or regulations promulgated by the LPA, Mississippi Transportation Commission [MTC], Department of Employment Security, State Tax Commission, Secretary of State, Department of Human Services in accordance with the Mississippi Administrative Procedures Law (Section 25-43-1 et seq., Mississippi Code of 1972, as amended), stating affirmatively that the individual, firm, or corporation which is contracting with the LPA has registered with and is participating in a federal work authorization program* operated by the United States Department of Homeland Security to electronically verify information of newly hired employees pursuant to the Immigration Reform and Control Act of 1986, Pub.L. 99-603, 100 Stat 3359, as amended. The undersigned agrees to inform the LPA if the undersigned is no longer registered or participating in the program.

The undersigned agrees that, should it employ or contract with any entity(s) in connection with the performance of this CONTRACT, the undersigned will secure from such entity(s) verification of compliance with the Mississippi Employment Protection Act. The undersigned further agrees to maintain records of such compliance and provide a copy of each such verification to the LPA, if requested, for the benefit of the LPA or this CONTRACT.

871575

EEV* Company Identification Number [Required]

The undersigned certifies that the above information is complete, true and correct to the best of my knowledge and belief. The undersigned acknowledges that any violation may be subject to the cancellation of the contract, ineligibility for any state or public contract for up to three (3) years, the loss of any license, permit, certificate or other document granted by any agency, department or government entity for the right to do business in Mississippi for up to one (1) year, or both, any and all additional costs incurred because of the contract cancellation or the loss of any license or permit, and may be subject to additional felony prosecution for knowingly or recklessly accepting employment for compensation from an unauthorized alien as defined by 8 U.S.C §1324a(h)(3), said action punishable by imprisonment for not less than one (1) year nor more than five (5) years, a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or both, in addition to such prosecution and penalties as provided by Federal law.

BY: Karen J Sites
Authorized Officer or Agent

11/02/16
Date

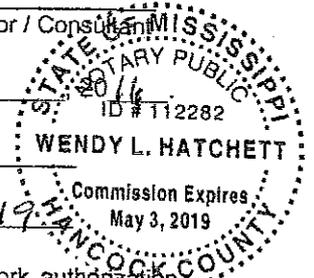
Karen J Sites
Printed Name of Authorized Officer or Agent

President
Title of Authorized Officer or Agent of Contractor / Consultant

SWORN TO AND SUBSCRIBED before me on this the 2nd day of November

Wendy Hatchett
NOTARY PUBLIC

My Commission Expires: May 3, 2019



* As of the effective date of the Mississippi Employment Protection Act, the applicable federal work authorization program is E-Verify™ operated by the U. S. Citizenship and Immigration Services of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration.

Summary

City of Diamondhead Safe Routes to School
 Hancock County
 Project Number STP-023-00(051)LPA /107369-701000
 MS Engineering and Development, LLC
 11/3/2016

	Man-Hours	Sub-Consultants Fee	Salary Cost	Overhead	FCCM	Total Labor Cost	Direct Cost	Fixed Fee	Total Cost
Activation	20		\$670.00	\$737.00	\$0.00	\$1,407.00		\$168.84	\$1,575.84
Meetings	42		\$1,450.00	\$1,595.00	\$0.00	\$3,045.00		\$365.40	\$3,410.40
Environmental	4		\$140.00	\$154.00	\$0.00	\$294.00		\$35.28	\$329.28
Geotechnical									
Roadway	237		\$8,000.00	\$8,800.00	\$0.00	\$16,800.00		\$2,016.00	\$18,816.00
Bridge									
Hydraulics									
Survey	125	\$6,998.04							\$6,998.04
PS&E/Advertisement	66		\$2,370.00	\$2,607.00	\$0.00	\$4,977.00		\$597.24	\$5,574.24
Total	493	\$6,998.04	\$12,630.00	\$13,893.00		\$26,523.00		\$3,182.76	\$36,703.80

Grand Total \$36,703.80

Activation Sheet
City of Diamondhead Safe Routes to School
Hancock County
Project Number STP-023-00(051)LPA /107369-701000
MS Engineering and Development, LLC
11/3/2016

MDOT Process Item Description	No.	Estimated Hours						Total Hours
		Project Engineer	Design Technician	Administrative	Resident Inspector			
Project Activation	Sheets							
LPA 100		1.0	1.0	0.5				2.5
LPA 700/800		1.0	1.0	0.5				2.5
Kickoff Meeting		6.0	6.0	0.5				12.5
Quality Control		1.0	1.0	0.5				2.5
Total Hours		9.0	9.0	2.0				20.0

Raw Labor Rates	\$40.00	\$30.00	\$20.00	\$30.00		
Labor Cost	360.0	270.0	40.0		\$670.00	
			Overhead	%	110.00%	\$737.00
			Fixed Fee	%	12.00%	\$188.84
			FCCM Overhead	%		\$0.00

<u>Direct Costs:</u>	Qty.	Unit Price ¹
Mileage		
Meals		
Lodging		
Postage		
Supplies		
Reproductions		
Other		

¹ See State Travel Handbook

Total Direct Costs:

Prime Total	\$1,575.84
Subconsultant A	
Subconsultant B	
Subconsultant Total	
Project Total	\$1,575.84

Meetings Sheet
 City of Diamondhead Safe Routes to School
 Hancock County
 Project Number STP-023-00(051)LPA /107369-701000
 MS Engineering and Development, LLC
 11/3/2016

MDOT Process Item Description	No. Sheets	Estimated Hours								Total Hours
		0	0	Project Engineer	Design Technician	Administrative	Resident Inspector	0	0	
Preliminary Plans										
Print and Distribute Plans				1.0		2.0				3.0
Conduct Plan in Hand review				8.0	2.0					10.0
Prepare Field Review Report				3.0		0.5				3.5
Final Plans										
Print Plans and Specifications						4.0				4.0
Complete Design Notebook				2.0		0.5				2.5
Prepare ROW/Util Status Report										
Conduct Plan Review				8.0						8.0
Prepare Office Review Report				3.0		0.5				3.5
PS&E Assembly										
MDOT Coordination				2.0		0.5				2.5
Quality Control				2.0	2.0	0.5				4.5
Total Hours				29.0	4.0	8.5				41.5

Raw Labor Rates	\$0.00	\$0.00	\$40.00	\$30.00	\$20.00	\$30.00	\$0.00	\$0.00	
Labor Cost			1160.0	120.0	170.0				\$1,450.00
						Overhead	%	110.00%	\$1,585.00
						Fixed Fee	%	12.00%	\$365.40
						FCCM Overhead	%	0.00%	\$0.00

Direct Costs:	Qty.	Unit Price ¹
Mileage		
Meals		
Lodging		
Postage		
Supplies		
Reproductions		
Other		

¹ See State Travel Handbook

Total Direct Costs:

Prime Total		\$3,410.40
Subconsultant A		
Subconsultant B		
Subconsultant Total		
Project Total		\$3,410.40

Environmental Sheet
 City of Diamondhead Safe Routes to School
 Hancock County
 Project Number STP-023-00(051)LPA /107369-701000
 MS Engineering and Development, LLC
 11/3/2016

MDOT Process Item Description	No.	Estimated Hours								
	Sheets	0	0	Project Engineer	Design Technician	Administrative	Resident Inspector	0	0	Total Hours
Environmental Documentation										
Welland Investigation				3.0		1.0				4.0
Permits										
NPDES										
USACE										
Quality Control				3.0		1.0				4.0

Raw Labor Rates	\$0.00	\$0.00	\$40.00	\$30.00	\$20.00	\$30.00	\$0.00	\$0.00	
Labor Cost			120.0		20.0				\$140.00
						Overhead	%	110.00%	\$154.00
						Fixed Fee	%	12.00%	\$35.28
						FCCM Overhead	%	0.00%	\$0.00

<u>Direct Costs:</u>	Qty.	Unit Price ¹
Mileage		
Meals		
Lodging		
Postage		
Supplies		
Reproductions		
Other		

¹ See State Travel Handbook

Total Direct Costs:

Prime Total		\$329.28
Subconsultant A		
Subconsultant B		
Subconsultant Total		
Project Total		\$329.28

Roadway Sheet
City of Diamondhead Safe Routes to School
Hancock County
Project Number STP-023-00(051)LPA 107369-701000
MS Engineering and Development, LLC
11/3/2016

Sheet Clean-up and Organization				2.0	4.0	1.0				7.0
Design & Place Permanent Erosion Control Items										
Place Earthwork Information (phased if necessary)										
Traffic Control Detail Sheets										
Develop Phasing Narrative (if necessary)										
Construction Signing Detail				1.0	1.0					2.0
TCP Sheets				1.0	1.0					2.0
TCP Typical Sections				1.0	1.0					2.0
Address Corrections From MDOT TCP Check					1.0					1.0
Special Design Sheets				2.0	2.0					4.0
Erosion Control Sheets (including plan-profile EC sheets)				1.0	1.0					2.0
QA/QC				1.0	4.0	1.0				6.0
Submit Office Review Plans										
2 Multi-Page PDF Files For Plans & Cross Sections				1.0						1.0
Complete/Submit Phase B Checklist				1.0	1.0	1.0				3.0
Submit Quantity Calculations (1 multi-page pdf)				1.0	1.0	1.0				3.0
Submit CADD Files				1.0	1.0	1.0				3.0
Total Hours				110.0	106.0	21.0				237.0

Raw Labor Rates	\$0.00	\$0.00	\$40.00	\$30.00	\$20.00	\$30.00	\$0.00	\$0.00	
Labor Cost			4400.0	3180.0	420.0				\$8,000.00
Overhead						%	110.00%		\$8,800.00
Fixed Fee						%	12.00%		\$2,016.00
FCCM Overhead						%	0.00%		\$0.00

Direct Costs: Qty. Unit Price¹
Mileage
Meals
Lodging
Postage
Supplies
Reproductions
Other
¹ See State Travel Handbook

Total Direct Costs:

Prime Total	\$18,816.00
Subconsultant A	
Subconsultant B	
Subconsultant Total	
Project Total	\$18,816.00

Survey Sheet
 City of Diamondhead Safe Routes to School
 Hancock County
 Project Number STP-023-00(051)LPA /107369-701000
 Crosby Surveying
 11/3/2016

MDOT Process Description	Item	No. Sheets	Estimated Hours					Total Hours
			Principal	Professional Surveyor	Party Chief	Field Crew		
Field Review								
	Gather Property Owner Information from Tax Records; Prepare & Send Out Right of Entry Notification Letters (x Properties)							
	Property Owner Interview & Questionnaire (x Properties)							
	Establish/Verify the Primary Horizontal & Vertical Control				1.0	1.0		2.0
	Establish Secondary Control Points as a Supplement to the Primary Control							
	Establish and Verify Approx. x TBM's (Temporary Benchmarks)				1.0	1.0		2.0
	Perform Topographic Survey of Main Line (x LF @ y' Intervals)				30.0	30.0		60.0
	Layout and Perform Cross Sections of Main Line (x LF @ y' Intervals)							
	Perform Topographic Survey of Intersecting Streets (x side roads - y LF @ z' Intervals)							
	Layout and Perform Cross Sections of Main Line (x side roads - y LF @ z' Intervals)							
	Traverse, Profile, & Section Major Drainage Channels (x Locations - y within Floodway Limits)							
	Utility Mapping - Locate Underground Utilities per MS. One Call System/Compiling Utility Drawings from Owners - Municipalities				8.0	8.0		16.0
	Develop Digital Terrain Model							
	Generate Finalized Existing Conditions Drawing			40.0				40.0
	Quality Control		5.0					5.0
Total Hours			5.0	40.0	40.0	40.0		125.0

Raw Labor Rates	\$55.00	\$36.00	\$17.00	\$13.50	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Labor Cost	275.0	1400.0	680.0	540.0					\$2,895.00

Overhead	%	110.00%	\$3,184.50
Fixed Fee	%	12.00%	\$729.54
FCCM Overhead	%	0.00%	\$0.00

Subcontractor: Crosby Surveying
 Mileage: 5 roundtrips from Biloxi to Diamondhead @ 70 miles each

Direct Costs:	Qty.	Unit Price ¹	
Mileage	350.0	\$0.54	\$189.00
Meals			
Lodging			
Postage			
Supplies			
Reproductions			
Other			

¹ See State Travel Handbook

Total Direct Costs: \$189.00

Prime Total \$6,998.04

Subconsultant A
 Subconsultant B
 Subconsultant Total

Project Total \$6,998.04

PS&E / Advertisement
City of Diamondhead Safe Routes to School
Hancock County
Project Number STP-023-00(051)LPA /107369-701000
MS Engineering and Development, LLC
11/3/2016

MDOT Process Description	Item	Estimated Hours									
		No. Sheets			Project Engineer	Design Technician	Administrative	Resident Inspector			Total Hours
PS&E Assembly											
Right of Way Certification					1.0						1.0
Utility Certification					1.0						1.0
Encroachment Certification					1.0						1.0
Hazardous Waste Certification					1.0						1.0
Asbestos Abatement Certification					1.0						1.0
Compose Letters							1.0				1.0
Compile Forms							1.0				1.0
Print Plans					5.0		2.0				7.0
Assemble Specifications							2.0				2.0
Material Checklist						2.0					2.0
MDOT Coordination					18.0						18.0
Advertisement											
Print Plans and Specifications							2.0				2.0
Prepare Advertisement					0.5		1.0				1.5
Bidder Coordination					1.0		0.5				1.5
Receive & Evaluate Bids					4.0		1.0				5.0
Assemble Bids and Submit					8.0		1.0				9.0
Quality Control					12.0						12.0
Total Hours					51.5	3.0	11.0				65.5

Raw Labor Rates	\$0.00	\$0.00	\$40.00	\$30.00	\$20.00	\$30.00	\$0.00	\$0.00	
Labor Cost			2080.0	90.0	220.0				\$2,370.00
						Overhead	%	110.00%	\$2,607.00
						Fixed Fee	%	12.00%	\$597.24
						FCCM Overhead	%	0.00%	\$0.00

<u>Direct Costs:</u>	Qty.	Unit Price ¹
Mileage		
Meals		
Lodging		
Postage		
Supplies		
Reproductions		
Other		

¹ See State Travel Handbook

Total Direct Costs:

Prime Total	\$5,574.24
Subconsultant A	
Subconsultant B	
Subconsultant Total	
Project Total	\$5,574.24



Agenda Item 2017-045

5000 Diamondhead Circle • Diamondhead, MS 39525-3260
Phone: 228.222.4626 Fax: 228.222.4390
www.diamondhead.ms.gov

November 10, 2016

Mayor and Council
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525

Dear Councilmembers:

Re: Professional IT Services

The contract for professional IT services with AGJ has expired. Proposals were received from AGJ and Universal ComOne to provide these services which now includes additional computers in the police department.

The quotes for monthly fees are as follows:

Universal ComOne	\$1,540.00
AGJ	\$1,529.04

I am recommending acceptance of the proposal received from AGJ for continued professional IT services for the City for a 12-month period.

Thank you for your consideration and approval.

Sincerely,

A handwritten signature in black ink that reads 'Clovis Reed'.

Clovis Reed
City Manager

CR:jk



Complete Care Agreement

22
PC's

1. Terms of Agreement

This Agreement between **The City of Diamondhead**, herein referred to as C is effective upon the date signed and shall remain in force for 12 months. Appendix B.

- a) This Agreement may be terminated by the Client or by AGJ for an
- b) This Agreement may be terminated by the Client upon sixty (60) d
 - I. Fails to fulfill in any material respect its obligations und within thirty (30) days of receipt of such written notice.
 - II. Breaches any material term or condition of this Agreeem (30) days of receipt of such written notice.
- c) If either party terminates this Agreement, AGJ will assist in the o of services to another provider. Client agrees to pay AGJ the actual costs of rendering such assistance.

2. Coverage

All services will be provided to the Client during the hours of 8:00 am – 5:00 pm Monday through Friday (excluding public holidays). Network and Server Monitoring will be provided to the Client by AGJ through remote means 24/7/365. All services, as well as Services that fall outside this scope, will fall under the provisions of Appendix A. Hardware costs of any kind are not covered under the terms of this Agreement.

Support and Escalation

AGJ Systems will respond to Client's "Trouble Tickets" within four (4) hours for non-emergency issues and within one (1) hour for emergency issues. Trouble Tickets can be opened by email, phone, or through AGJ's client portal. Each call will be assigned a Trouble Ticket number for tracking. Travel to client's office/s within a 50-mile radius of AGJ's office is included in this agreement.

Service outside Normal Working Hours

Emergency services performed outside of the hours of 8:00 am – 5:00 pm Monday through Friday, excluding public holidays, shall be subject to provisions of Appendix A.

Limitation of Liability

In no event shall AGJ be held liable for indirect or consequential damages arising out of service provided hereunder, including but not limited to loss of profits or revenue, loss of use of equipment, lost data, costs of substitute equipment, or other costs.

3. Client Equipment Covered

AGJ will provide monitoring, maintenance, helpdesk support, central services, network administration, and virtual CIO services for the Client's office. This agreement covers support for existing computers, servers, networking equipment, and mobile devices at the Client's office.

Item	Included	Qty
Helpdesk/Reactive Support Team (remote/onsite)	Yes	22 PCs
vCIO, Network Admin, Central Services	Yes	22 PCs
Offsite Backup (file level)	Yes	100 GB
BDR (Backup and DR server)	No	
Mobile Device Mgmt Software (MDM)	No	
Office 365 (Exchange Only)	Yes	18 accounts
Office 365 (Business Suite)	Yes	8 accounts
Antivirus, Antispam, Antimalware Software	Yes	22 PCs
PC/Laptop Recycling Services	Yes	22 PCs
UTM (unified threat manager)	Yes	1 UTM
Security Awareness Training and Notices (electronic)	Yes	22 PCs
Remote PC Access	Yes	22 PCs

4. Backup Protected Equipment and Retention Policy

	Qty	GB used locally	Retention
Servers	1	100 GB	
Desktops and Laptops	0		

5. Additional Services

Hardware/System Support

AGJ shall provide support for currently installed hardware and software, provided that all hardware is covered under a currently active vendor warranty; or replaceable parts be readily available, and all software be genuine and vendor-supported. Software patching is included. Should any hardware or systems fail to meet these provisions, they will be excluded from this Service Agreement. Should 3rd Party Vendor Support Charges be required in order to resolve any issues, these will be discussed with the Client and passed on to the Client. Installation of new hardware and software is not included in this agreement.*

Monitoring and Reporting Services

AGJ will provide ongoing monitoring of all critical devices as indicated in section 3 (above). AGJ will provide weekly and monthly reports as well as document critical alerts, scans, and event resolutions to Client. Additional reports (asset, licensing, etc...) can be provided at Client's request (at no additional charge).

Virtual CIO

AGJ Systems will schedule quarterly or annual business reviews (depending on which the Client prefers) with the Client to discuss the state of their current IT infrastructure, upcoming IT developments, and future technology plans of the Client. AGJ Systems will assist in developing an IT budget to meet the Client's future growth projections.

6. Excluded Services

Service rendered under this Agreement does not include:

- 1) The cost of any parts, equipment, or shipping charges of any kind.
- 2) The cost of any Software, Licensing, or Software Renewal or Upgrade Fees of any kind (unless specifically stated in this contract). Antivirus and Antispyware software are included in this agreement.
- 3) The cost of any 3rd Party Vendor or Manufacturer Support or Incident Fees.
- 4) Programming (modification of software code) unless as specified in section 3 (above).
- 5) Installation of new hardware or new software (e.g. line-of-business application).*
- 6) Office Telephone System support unless specified in section 3 (above).
- 7) Mail security for non-Exchange environments.

***New computers will be installed at no charge if purchased from AGJ.**

7. Confidentiality and Non-Compete

AGJ and its agents/employees will not use or disclose Client information, except as necessary to or consistent with providing the contracted services, and will protect against unauthorized use.

The Client agrees that without written consent, at all times while Client is employing the services of AGJ and for twelve (12) months after the contract period terminates, the Client will not solicit, hire, retain (including as a consultant) any employee or contractor of AGJ or any former employee who has left employment or contract within twelve (12) months prior to such hiring.

8. Miscellaneous

This Agreement shall be governed by the laws of the State of Mississippi. It constitutes the entire Agreement between the Client and AGJ Systems and no other promises or conditions were made or set in any other agreement, whether oral or written. This agreement supersedes any prior written or oral agreements between the parties, as of the date executed.

AGJ Systems is not responsible for failure to render services due to circumstances beyond its control including, but not limited to, acts of God.

Service Rates

Labor	Rate
Remote and Onsite Server Mgmt. 8am-5pm M-F	INCLUDED
Remote and Onsite Printer Mgmt. (Tier 1) 8am-5pm M-F	INCLUDED
Remote and Onsite Network Mgmt. 8am-5pm M-F	INCLUDED
Remote and Onsite PC/Laptop Help Desk 8am-5pm M-F	INCLUDED
24x7x365 Server and Network Monitoring	INCLUDED
Managed Server Backups 8am-5pm M-F	INCLUDED
Server and PC Proactive Tasks	INCLUDED
Remote PC Management/Help Desk After Hours and Weekends	\$150/hour
Remote Printer Management (Tier 1) After Hours and Weekends	\$150/hour
Remote Network Management After Hours and Weekends	\$150/hour
Remote Server Management After Hours and Weekends	\$150/hour
Managed Server Backups After Hours and Weekends	INCLUDED
Onsite Labor After Hours and Weekends	\$150/hour
Server Installations and Projects	\$115/hour
Software Deployment Projects	\$115/hour
New PC Installations* purchased from AGJ	INCLUDED
New PC Installations* purchased from other vendors	\$115/hour
Project Manager	\$115/hour
Travel Outside 50-miles (half rate)	\$57.50/hour

*PCs purchased through AGJ will be installed at no charge. Clients may purchase PCs or other equipment through other vendors (clients will be charged at hourly rate above for equipment not purchased through AGJ).

We ask that Client sends specifications of any technology equipment to AGJ for a review before purchase (review at no charge to Client). This will reduce problems with incorrect equipment/specifications if you choose to purchase them through another vendor.

We are your trusted IT provider, and we always strive to offer the best prices while guaranteeing that the products we sell are warranted and will work with your network.

Appendix B

Optional Add-Ons

Item	Rate
Hosted Exchange Mailbox ~ 50 GB storage with antispam	\$4.50/month
Hosted Exchange Distribution List	\$0

Appendix C

Server Management

Complete Care Server Management Plan

Remote Support	Included
Onsite Support	Included
24X7 Server Availability Monitoring	Included
Microsoft Patch Management	Included
Event Log Monitoring	Included
Log File Maintenance	Included
Drive Space Monitoring	Included
Printer Setting Management	Included
User Account Administration	Included
File Sharing Permission Management	Included
Security Administration	Included
Antivirus Software Management	Included
Backup Job Monitoring	Included
Backup Job Testing (Restoring)	Included

Desktop/Laptop Management

Complete Care Computer Management Plan

Remote Support	Included
Onsite Support	Included
Online Asset Management	Included
Online License Management	Included
Microsoft Patch Management	Included
Event Log Monitoring	Included
Log File Maintenance	Included
Drive Space Monitoring	Included
Printer Setting Management	Included
User Account Administration	Included
File Sharing Permission Management	Included
Security Administration	Included
Antivirus Software Management	Included
Spyware and Adware Software and Management	Included
Proactive Optimization Tasks	Included

Network Management

Complete Care Computer Management Plan

Internet Service Provider Management	Included
Remote and Onsite Support	Included
Wireless Access Point Management	Included
Managed Firewall (including hardware/software, management, and daily updates)	Included
Log Monitoring	Included
VPN Management	Included
Security Administration	Included

Additional Information

Complete Care Management Plan

Access to AGJ Client Portal and all service tickets	Included
Executive Summary Reporting	Included
Travel Fee	Included
Emergency Response Time	< 1 Hour
Recycling of PCs and Printers	Included
Antivirus Software	Included
Antimalware Software	Included
Remote Access Software	Included

Creation of AUP (Acceptable Use Policy)
Technology Review and Planning Meetings
Email Management on SmartPhones/Mobile Devices
100% No-Hassle Guarantee
After-Hours Support
Installation of new PCs

**Included
Included
Included
Available
If Ordered
via AGJ**