



Mayor Depreo	
Councilmember Maher	At-Large
Councilmember Finley	Ward 1
Councilmember Liese	Ward 2
Councilmember Cumberland	Ward 3
Councilmember Clark	Ward 4

**AGENDA**  
**REGULAR MEETING OF THE CITY COUNCIL**  
**Tuesday, June 20, 2023**  
**6:00 PM CST**  
Council Chambers, City Hall  
and via teleconference, if necessary

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**Call to Order.**

Invocation  
Pledge of Allegiance  
Roll Call  
Confirm or Adjust Agenda Order

**Presentation Agenda.**

- a. The next Regular Meeting of the City Council will be held July 5, 2023 at 6:00 p.m. in Council Chambers located at City Hall.
- b. City Hall will be closed Tuesday, July 4, 2023 in observance of Independence Day.
- c. The City's July 4th celebration will be held on Saturday, July 1st from 5:30-10:00 p.m. located on the South Side at Harbor Circle. Fireworks Display will begin at 9:00 p.m.

Council Comments.

City Manager's Report.

Public Comments on Agenda Items.

**Policy Agenda.**

**Minutes:**

1. Motion to approve the June 6, 2023 Regular Meeting Minutes.

**Resolutions:**

2. 2023-251: Motion to adopt Resolution 2023-024 thereby acquiring by donation certain real property for drainage and/or green space from Piji White.
3. **PUBLIC HEARING - 2023-258:** Motion to adopt Resolution **2023-025** to adjudicate that the abandoned gooseneck trailer (VIN 5J2GS332XBE010639) and yellow JCB 214E backhoe (Vin SLP214TCXE0466041) at 6435 Kalipekona Way (parcel numbers 131A-1-03-053.000 thru 131A-1-03-057.000) are a menace to the public health, safety and general welfare of the community. Authorization to advertise for bids and/or obtain quotes to perform the necessary services to remove the trailer and backhoe from the property and assess the costs to said property and for other related **purposes**. Property owner is Bonnie F. Geerts.

## Consent Agenda:

4. **2023-249:** Motion to approve Pay Application Three(3) to JLB Contractors, Inc. in the amount of \$149,132.14 for Diamondhead Drive East and Lily Pond Dredging.
5. **2023-250:** Motion to approve payments in the amount of \$1,123.75 to Digital Engineering for Beaux Vue Phase 2 Drainage Improvements and \$15,000.00 for the Bond Paving Project.
6. **2023-252:** Motion to approve payments to Pickering Firm, Inc. in the amount of \$5,065.00 for Lily Pond Dredging.
7. **2023-253:** Motion to declare surplus the following three(3) Diamondhead Police Units - 2014 Ford Explorer Vin#1FM5K8AR1EGA14642, 2014 Ford Explorer VIN#1FM58AR2EG25538 and 2016 Ford Explorer VIN#1FM5K8ARGGA97109, establish the value of \$1.00 and proceed with sale of same to Hancock County.
8. **2023-254:** Motion to enter into a new commercial lease agreement for the Noma Drive Ballfield property with Diamondhead Country Club & Property Owners Association Inc. for ten (10) years and for additional one (1) year terms thereafter in the sum of One Dollar (\$1.00) per year.
9. **2023-256:** Motion to approve payment in the amount of \$5,607.50 to Covington Civil & Environmental, LLC for Site Development Reviews, in the amount of \$7,000.00 for Standard Specifications and Drawings, in the amount of \$20,323.80 for Commercial District Transformation Project and in the amount of \$42,285.00 for Commercial District Noma Drive Improvements.
10. **2023-257:** Motion to approve Change Order No. 3 for sixty (31) additional days to the contract with Huey P. Stockstill, LLC. for the Roadway Improvements Phase 4 with no change to contract price.
11. **2023-259:** Motion to approve amendment to work assignment with Covington Civil and Environmental, LLC for the commercial transformation project to include roadway improvements on Noma Drive from Diamondhead Circle until the end of Noma Drive in the amount of \$19,500.00 for a total engineering cost of \$829,200.00.
12. **2023-260:** Motion to approve repayment of interfund loan and transfer of fund in the amount of \$155,455.60 from reserve to close Fund 117 East Aloha Improvements Project and to transfer local grant match in the amount of \$300,000 from General Fund to Fund 163 GCRF22-05 Commercial District Transformation.
13. **2023-261:** Motion to approve Budget Amendment 2023-010.
14. **2023-262:** Motion to approve to enter in agreement with Adela, Inc. for delinquent account collections for a initial term of 3 years with auto renewals.
15. **2023-263:** Motion to approve to ARPA Agreements (State Match).
16. **2023-264:** Motion to approve Work Assignment under the Master Service Agreement with Covington Civil and Environmental, LLC in the amount not to exceed \$23,000.00 for Makiki Drive Project Support.
17. **2023-265:** Motion to approve to advertise for bids for Noma Drive Paving.



- 18.** **2023-266:** Motion to accept and award low bid received from Bottom 2 Top Construction, LLC. in the amount of \$345,964.22 for the Noma Drive Waterfront Site, Utility and Drainage Improvements, authorize the City Manager to execute the contract for same and to issue the notice to proceed as appropriate.

**Action Agenda.**

**Routine Agenda.**

**Claims Payable**

- 19.** Motion to approve Docket of Claims (DKT230799-DKT230838) in the amount of \$545,400.62.
- 20.** Motion to approve Payroll Payables DKT230789-DKT230798 in the amount of \$52,183.57, PKPKT01364 in the amount of \$2,523.58, PYPKT01365 in the amount of \$26.860.60, PYPKT01371 in the amount of \$30,994.19 and PYPKT01374 in the amount of \$30,484.97.

**Department Reports**

- a.** May 2023 Financials
- b.** Building  
Court  
Police

**Public Comments on Non-Agenda Items.**

**Executive Session - If Necessary**

**Adjourn/Recess.**

*NOTE: THE CITY OF DIAMONDHEAD WILL FURNISH APPROPRIATE AUXILIARY AIDS AND SERVICES WHERE NECESSARY TO AFFORD INDIVIDUALS WITH DISABILITIES AN EQUAL OPPORTUNITY TO SERVICES AND ACTIVITIES OF THE CITY. A WRITTEN REQUEST BY OR ON BEHALF OF QUALIFYING INDIVIDUALS SHALL BE SUBMITTED IN A TIMELY MANNER TO THE CITY CLERK.*



**MINUTES**  
**REGULAR MEETING OF THE CITY COUNCIL**  
**Tuesday, June 06, 2023**  
**6:00 PM CST**  
Council Chambers, City Hall

**Call to Order.**

Mayor Depreo called the meeting to order at 6:00 p.m.

Invocation-Councilmember Cumberland

Pledge of Allegiance

Roll Call

**PRESENT**

Mayor Nancy Depreo

Councilmember-At-Large Gerard Maher

Ward 1 Shane Finley

Ward 2 Anna Liese

Ward 3 John Cumberland

Ward 4 Charles Clark

Confirm or Adjust Agenda Order

Motion made by Ward 1 Finley, Seconded by Ward 4 Clark to confirm the agenda.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 1 Finley, Ward 2 Liese, Ward 3 Cumberland, Ward 4 Clark

**MOTION CARRIED UNANIMOUSLY**

**Presentation Agenda.**

- a. The next Regular Meeting of the City Council will be held June 20, 2023 at 6:00 p.m. in Council Chambers located at City Hall.
- b. City Hall will be closed Tuesday, July 4, 2023 in observance of Independence Day.
- c. The City's July 4th celebration will be held on Saturday, July 1st from 5:30-10:00 p.m. located on the South Side at Harbor Circle. Fireworks Display will begin at 9:00 p.m.
- d. East Hancock Library Updates - John Brdecka, Executive Director, Hancock County Library System
- e. Traffic Study - Andrew Levens, Covington Civil & Environmental, LLC.
- f. FY23 Year-End Projection - Jeannie Klein, City Clerk

City Manager's Report.

1. Lily Pond and I-10 Pond – The contractor has completed the dredging and erosion control measures of Lily Pond. The I-10 pond dredging will continue until the end of the month. The current schedule has a completion date of June 21<sup>st</sup>. The end date for the contract is July 17<sup>th</sup>.
2. Noma Drive Ballfields – The lease agreement for the ballfields on Noma Drive has been drafted and will be presented to the council at the next meeting for approval.
3. Park Ten Road – The city has advertised this project. Bids are due June 30<sup>th</sup>.
4. Phase 4 paving – The paving project is currently demobilized. The contractor installing the culverts under Bayou Drive is waiting for materials to begin. Once completed, the paving project can be restarted. The current end date of the project is June 30<sup>th</sup>.
5. Diamondhead Drive Paving – I am asking for the council to approve advertising this project on July 15<sup>th</sup> with bids due July 18<sup>th</sup>. After the engineering review, I expect to have this on the August council meeting to award.
6. Montjoy Creek Kayak Launch – The engineer is currently finalizing the location of the walking path and kayak launch. Once this is determined, the exact location will be provided to USACE for final permitting.
7. Noma Drive Boat Launch – The engineer is completing plans for USACE to complete the permit process.
8. Coon Branch/Koloa/Lots 7 & 8 Drainage Projects – The engineer has completed the survey work on these three projects in the area. Currently waiting for the FY23 grant agreement and July 1<sup>st</sup> to start the survey work on the Anahola Drive area. This will provide a comprehensive review of the entire area. GOMESA funds are being used for these projects.
9. Makiki Drive – The City Engineer is developing the specifications to complete the project. Once we have them and the OPC (Opinion of Probable Cost), we will proceed with securing a contractor to complete the job.
10. Traffic Study – Covington has completed the traffic count on Koloa Street and provided an update to the council.

**Policy Agenda.**

**Minutes:**

1. Motion to approve the May 16, 2023 Regular Meeting Minutes.

Motion made by Ward 4 Clark, Seconded by Ward 2 Liese to approve the May 16, 2023 Regular Meeting Minutes.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 1 Finley, Ward 2 Liese, Ward 3 Cumberland, Ward 4 Clark

**MOTION CARRIED UNANIMOUSLY**

**At 7:13 p.m. Ward 1 Shane Finley Left the Meeting**

**Tabled:**

2. **2023-202:** Motion to authorize City Manager to advertise to bid the Twin Lakes Fishing Pier and Walking Trail Project as per completed construction plans dated August 2022 with entry building as Bid Alternate No. 1.

**NO ACTION TAKEN**

**Resolutions:**

3. **2023-240:** Motion to adopt Resolution 2023-021 thereby appointing Mayor Depreo as Voting Delegate and Councilmember Clark as First Alternate to serve as Mississippi Municipal League 2023 Voting Delegates.

Motion made by Ward 2 Liese, Seconded by Councilmember-At-Large Maher to adopt Resolution 2023-021 thereby appointing Mayor Depreo as Voting Delegate and Councilmember Clark as First Alternate to serve as Mississippi Municipal League 2023 Voting Delegates.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Liese, Ward 3 Cumberland, Ward 4 Clark

**MOTION CARRIED UNANIMOUSLY**

4. **2023-243:** Motion to adopt Resolution 2023-022 thereby accepting Deeds of Dedication granting easements on Lots 4, 5, 6, and 7, Block 2, Diamondhead Subdivision Phase 3, Unit 1, Hancock County from Structures of Diamondhead, Inc.

Motion made by Ward 3 Cumberland, Seconded by Councilmember-At-Large Maher to adopt Resolution 2023-022 thereby accepting Deeds of Dedication granting easements on Lots 4, 5, 6, and 7, Block 2, Diamondhead Subdivision Phase 3, Unit 1, Hancock County from Structures of Diamondhead, Inc.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Liese, Ward 3 Cumberland, Ward 4 Clark

**MOTION CARRIED UNANIMOUSLY**

5. **2023-245:** Motion to adopt Resolution 2023-023 thereby abandoning a 5' drainage/utility easement on each side of the common property line between lots 4 and 5, Diamondhead Phase 2, Unit 7, Block 7. The parcel number is 067H-2-25-082.000. The physical street address is 10879 Ala Moana Street. (Dixon)

Motion made by Ward 4 Clark, Seconded by Councilmember-At-Large Maher to adopt Resolution 2023-023 thereby abandoning a 5' drainage/utility easement on each side of the common property line between lots 4 and 5, Diamondhead Phase 2, Unit 7, Block 7. The parcel number is 067H-2-25-082.000. The physical street address is 10879 Ala Moana Street. (Dixon)

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Liese, Ward 3 Cumberland, Ward 4 Clark

**MOTION CARRIED UNANIMOUSLY**

**Consent Agenda:**

Motion made by Ward 2 Liese, Seconded by Ward 3 Cumberland to approve the following consent items:

6. **2023-241:** Motion to approve annual renewal of Web Premium with web platform migration with CivicPlus (formerly Municode) with an increase of \$420.00 for total annual subscription in the amount of \$3,470.00 effective July 1, 2023.
7. **2023-242:** Motion to declare 16 police uniform shirts surplus and authorize proper disposal of same.
8. **2023-244:** Motion to approve amended grant agreement with MS Department of Marine Resources for additional funding in the amount of \$75,000 for the Tidelands FY21-P510-02 Twin Lakes Fishing Pier and Boardwalk Project.
9. **2023-246:** Motion to authorize revision to the Employee Handbook regarding Public Works - On Call Policy effective upon Council approval.
10. **2023-247:** Motion to approve to advertise for bids for Diamondhead Drive Paving.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Liese, Ward 3 Cumberland, Ward 4 Clark

**MOTION CARRIED UNANIMOUSLY**

**Action Agenda.**

11. **2023-248:** Motion for discussion ARTICLE 9. - FENCES. (Depreo)

Motion made by Mayor Depreo, Seconded by Ward 4 Clark for discussion ARTICLE 9. - FENCES.  
(Depreo)

**NO ACTION TAKEN**

**Routine Agenda.**

**Claims Payable**

12. Motion to approve Docket of Claims (DKT230761-DKT230788) in the amount of \$92,950.62.

Motion made by Ward 4 Clark, Seconded by Councilmember-At-Large Maher to approve Docket of Claims (DKT230761-DKT230788) in the amount of \$92,950.62.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Liese, Ward 3 Cumberland, Ward 4 Clark

**MOTION CARRIED UNANIMOUSLY**

**Public Comments on Non-Agenda Items.**

Alison Butsch - In support of Koloa Stop Signs

Mike Barr - In support of Koloa Stop Signs

Mollie Nunez - In support of Koloa Stop Signs

Dennis Jones - In support of Koloa Stop Signs

**Executive Session - If Necessary**

**Adjourn/Recess.**

At 7:50 p.m. with no further business to come before the council, motion made by Councilmember-At-Large Maher, Seconded by Ward 4 Clark to adjourn.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Liese, Ward 3 Cumberland, Ward 4 Clark

**MOTION CARRIED UNANIMOUSLY**

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Nancy Depreo  
Mayor

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Jeannie Klein  
City Clerk

Resolution # 2023- 024

RESOLUTION AUTHORIZING THE MAYOR AND CITY COUNCIL (THE "GOVERNING BODY") OF THE CITY OF DIAMONDHEAD, MISSISSIPPI (THE "CITY"), TO ACQUIRE, BY DONATION FROM PIJI WHITE, CERTAIN REAL PROPERTY LOCATED WITHIN THE CITY FOR DRAINAGE AND GREENSPACE PURPOSES

WHEREAS, the Mayor and City Council (the "Governing Body") of the City of Diamondhead, Mississippi (the "City"), acting for and on behalf of the City, hereby finds and determines as follows:

1. The City is in need of acquiring certain real property for drainage and greenspace purposes that is currently owned by Piji White
2. The City is authorized to acquire real property pursuant to Miss. Code Ann. §21-17-1.
3. Piji White has expressed a willingness to donate the property legally described in the Deed of Dedication and attached hereto as Exhibit "A" to this resolution.
4. The City is willing to accept the donation of the aforementioned property.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY, AS FOLLOWS:

SECTION 1. That the Governing Body of the City will accept the donation of the aforementioned property.

SECTION 2. That the Governing Body of the City does hereby authorize the City Attorney to prepare any and all documentation related to the acquisition of the aforementioned property by donation, for the City Manager to execute any necessary documentation to effectuate the donation of the subject property and, for the Mayor to execute the Dedication Deed on behalf of the City attached collectively hereto as Exhibit "A."

The above and foregoing resolution, after having been first reduced to writing, was introduced by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_ and the question being put to a roll call vote, the result was as follows:



	Aye	Nay	Absent
Councilmember Finley	_____	_____	_____
Councilmember Liese	_____	_____	_____
Councilmember Cumberland	_____	_____	_____
Councilmember Clark	_____	_____	_____
Councilmember Maher	_____	_____	_____
Mayor Depreo	_____	_____	_____

The motion having received the affirmative vote of a majority of all of the members of the Governing Body, the Mayor declared the motion carried and the resolution adopted, this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

(SEAL)

PREPARED BY & RETURN TO:  
DEREK R. CUSICK (MS BAR#10653)  
CUSICK & WILLIAMS, PLLC  
Post Office Box 4008  
GULFPORT, MS 39502  
(228) 206-3819

INDEXING INSTRUCTIONS:

LOT 105, BLK 4, UNIT 1,  
DIAMONDHEAD PH 3, CITY OF  
DIAMONDHEAD, HANCOCK  
COUNTY, MISSISSIPPI

GRANTOR'S ADDRESS  
Piji White  
6522 Mauna Loa Drive  
Diamondhead, MS 39525  
(\_\_\_\_) \_\_\_\_\_

GRANTEE'S ADDRESS  
CITY OF DIAMONDHEAD, MS  
5000 DIAMONDHEAD CIRCLE  
DIAMONDHEAD MS 39525  
(228) 222-4626

STATE OF MISSISSIPPI

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

**DEED OF DEDICATION**

This DEED OF DEDICATION ("Deed") is made this \_\_\_\_ day of \_\_\_\_\_,  
2023, by and between PIJI WHITE, GRANTOR, and THE CITY OF DIAMONDHEAD, a  
municipality created and existing under the State of Mississippi ("City"), GRANTEE.

**\*\*WITNESSETH\*\***

WHEREAS, PIJI WHITE wishes to dedicate, grant and convey the following property to the City and be relieved of the cost and responsibilities associated with maintaining same; and

WHEREAS, the City wishes to acquire the property and assume the cost and responsibilities for maintaining same; and

WHEREAS, on \_\_\_\_\_, the Diamondhead City Council passed a resolution and order accepting the dedication of the property conveyed herein and agreeing to the terms contained herein, copy of which is attached hereto as Exhibit "A"; and

NOW, THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, PIJI WHITE hereby dedicates, grants, conveys, covenants and agrees as follows:

#### DEDICATION OF ONE UNDEVELOPED LOT

For and in consideration of the City accepting the property and maintaining the property as greenspace, PIJI WHITE, being the sole owner of, and the only party having any interest in, the property, does hereby dedicate, grant and convey unto the City, its successors and assigns, in fee simple, for the use of the general public as a greenspace and for drainage, the property described herein below and improvements thereon and appurtenances thereto, if any. This dedication of the property is made without warranties of any kind.

The City specifically accepts the dedication of the property without warranty and subject to the following conditions:

The conveyance herein is made subject to such valid mineral reservations and/or conveyances, if any, as may have been heretofore made on the property, or filed in the land records of the Office of the Chancery Clerk of Hancock County, Mississippi.

The conveyance herein is made subject to any and all easements located on, over and across the property, or filed in the land records of the Office of the Chancery Clerk of Hancock County, Mississippi.

The conveyance herein is made subject to any and all rights-of-way and/or easements for public utilities in, on and under the property.

The conveyance herein is made subject to the City maintaining the property as greenspace and for drainage and said property is not to be developed.

## Legal Description of the Undeveloped Lot:

Lot 105, Block 4, Unit 1, Diamondhead, Phase 3, Hancock County, Mississippi, according to the official map or plat thereof on file and of record in the office of the Chancery Clerk of Hancock County, at Bay St. Louis, Mississippi.

Together with all improvements situated thereon, and the perpetual right of ingress and egress over and upon all streets, roads, avenues and boulevards shown on said subdivision plat.

Parcel Number: 132G-2-03-140.000

IT IS FURTHER UNDERSTOOD AND AGREED that this instrument constitutes the entire agreement between Grantors and Grantee, there being no other oral agreements or representations of any kind or nature whatsoever.

EXECUTED, this the \_\_\_\_ day of \_\_\_\_\_, 2023.

**GRANTOR:**

\_\_\_\_\_  
**PIJI WHITE**

STATE OF MISSISSIPPI

COUNTY OF HANCOCK

Personally appeared before me, the undersigned Notary Public, the within named PIJI WHITE, who acknowledged that he signed and delivered this instrument on the day and year herein mentioned, after first having been duly authorized to do so.

GIVEN UNDER MY HAND AND SEAL this the \_\_\_\_ day of \_\_\_\_\_, 2023.

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

My Commission Expires:

\_\_\_\_\_

**GRANTEE:**

**CITY OF DIAMONDHEAD, MISSISSIPPI**

**BY:**

\_\_\_\_\_  
**NANCY DEPREO, MAYOR**

STATE OF MISSISSIPPI

COUNTY OF HANCOCK

Personally appeared before me, the undersigned Notary Public, the within named NANCY DEPREO, who acknowledged that she is Mayor of the City of Diamondhead, Mississippi, and that in said representative capacity she signed and delivered this instrument on the day and year herein mentioned, after first having been duly authorized to do so.

GIVEN UNDER MY HAND AND SEAL this the \_\_\_\_ day of \_\_\_\_\_, 2023.

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

My Commission Expires:

\_\_\_\_\_



**COPY**



5000 Diamondhead Circle  
Diamondhead, MS 39525-3260  
Phone: 228-222-4626 Fax: 228-222-4390  
[www.diamondhead.ms.gov](http://www.diamondhead.ms.gov)

June 5, 2023

Bonnie F. Geerts  
1322 State Street  
Jennings, LA 70546

RE: Notice of Violation  
6435 Kalipekona Way  
Parcel #'s 131A-1-03-053.000 to 131A-1-03-057.000

Ms. Geerts,

There is an abandoned trailer and backhoe located on the above-mentioned property. It is in violation of the City of Diamondhead Zoning Ordinance (Ordinance No. 2012-019), Section 8.1.3 - Parking and Storage of Certain Vehicles or Equipment, and it states, "Within the various residential zoning districts for the City of Diamondhead, the following restrictions and limitations concerning the parking of recreational vehicles, trailers, equipment, and the like shall apply. The following vehicles are prohibited from being parked in a residential zoning district for more than a 12-hour period: All motorized construction equipment. All trailers used to transport equipment or construction vehicle parked for more than 24 hours."

The violations are as follows:

Yellow JCB 214E B Backhoe with front end loader, VIN # SLP214TCXE0466041 and black 33' dual axle gooseneck trailer VIN # 5J2GS332XBE010639, Louisiana License Plate L595709 - Zoning Ordinance, Article 8.1.3; Mississippi Code §21-19-11.

Based on the violations identified, the City requests that you take the following corrective actions:

Remove the backhoe and trailer.

The City is asking that you please take the above action within the next FOURTEEN (14) days to prevent further action as set out in the paragraph below.

**NOTICE OF HEARING**

If you have not taken the above corrective actions within the 14 days provided, you are hereby given notice of and invited to attend a hearing before the Diamondhead City Council on June 20, 2023, at 6:00 PM in the City Council chambers at 5000 Diamondhead Circle, Diamondhead, Mississippi 39525, on the violations set forth above. At this hearing, the City Council will be asked to adjudicate that the subject property is in a state of uncleanliness or a menace to the public health, safety, and general welfare of the community. This adjudication will also authorize the City of Diamondhead to re-enter the property for a period of two (2) years without any further hearings if notice is posted on this property and at City Hall, 5000 Diamondhead Circle, Diamondhead, Mississippi 39525, at least seven (7) days prior to re-entering the property for resolution of the same type of violation. In addition, the City Council will be asked to authorize advertisements for bids to perform the necessary corrective actions. All costs incurred will be assessed to your property taxes and/or posted to the Hancock County Judgment Rolls. Please contact our office at 228-222-4626 if you have any questions about this letter or if the requested corrective actions are taken within the Fourteen (14) day period to avoid our proceeding with a hearing on your property.

Sincerely,



J. Pat Rich  
Development Coordinator  
[prich@diamondhead.ms.gov](mailto:prich@diamondhead.ms.gov)  
228-242-1613

cc: City Council  
City Manager  
City Attorney





5000 Diamondhead Circle  
Diamondhead, MS 39525-3260  
Phone: 228-222-4626 Fax: 228-222-4390  
www.diamondhead.ms.gov

May 12, 2023

**COPY**

Bonnie F. Geerts  
1322 State Street  
Jennings, LA 70546

RE: Notice of Violation  
6435 Kalipekona Way  
Parcel #'s 131A-1-03-053.000 to 131A-1-03-057.000

Ms. Geerts,

There is an abandoned construction trailer and backhoe located on the above-mentioned property. It is in violation of the City of Diamondhead Zoning Ordinance (Ordinance No. 2012-019), Section 8.1.3 - Parking and Storage of Certain Vehicles or Equipment, and it states, "Within the various residential zoning districts for the City of Diamondhead, the following restrictions and limitations concerning the parking of recreational vehicles, trailers, equipment, and the like shall apply. The following vehicles are prohibited from being parked in a residential zoning district for more than a 12-hour period: All motorized construction equipment. All trailers used to transport equipment or construction vehicle parked for more than 24 hours."

We have attempted to contact Chris Murray multiple times with no response. You are to remove the trailer, backhoe, 55-gallon drum, tires, and related material by Friday May 21, 2023. If not removed by the 21<sup>st</sup>, we will have the items removed at your expense.

Thank you in advance for your attention to this matter.

A handwritten signature in blue ink that reads 'J. Pat Rich'.

J. Pat Rich  
Development Coordinator  
228-242-1613



06-05-2023





06.05.2023

SLP214TCXE0466041

0466041

AH50608U841302C

445/754/2/00298

450/367/1/02851

53.3/2200

N RPM



06:05:2023





06.05.2023

MFD BY: EAST TEXAS LONGHORN TRAILERS, LLC DATE OF MFG.: 03/2011

GVWR: 10206 KG( 22500 LB) GAWR (EACH AXLE): 4536 KG( 10000 LB)

WITH TIRES RIMS AT COLD INFLATION PRESSURE SGL/DUAL

ST235X80X16 E 16X6 D 552 KPA( 80 PSI) DUAL

THIS VEHICLE CONFORMS TO ALL APPLICABLE U.S. FEDERAL MOTOR VEHICLE SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE SHOWN ABOVE

V.I.N. TYPE OF VEHICLE

5J2GS332XBE010639 TRAILER 33' DUAL-GN

5J2GS332XBE010639

**TIRE AND LOADING INFORMATION**

The weight of cargo should never exceed  
7,099 kg or 15,650 lbs.

TIRE	SIZE	COLD TIRE PRESS.
FRONT	ST235X80X16 E	552 KPA( 80 PSI)
INTER	NONE	
REAR	ST235X80X16 E	552 KPA( 80 PSI)
SPARE	NONE	

SEE OWNER'S MANUAL  
FOR ADDITIONAL INFORMATION





There came on for consideration at a meeting of the City Council of the City of Diamondhead, Mississippi, held on the **20th** day of **June, 2023**, the following Resolution:

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF DIAMONDHEAD, MISSISSIPPI, FINDING AND ADJUDICATING THAT THE HEREIN DESCRIBED ABANDONED CONSTRUCTION EQUIPMENT IS A SERIOUS PROBLEM TO THE COMMUNITY AND WELARE OF THE CITIZENRY OF THE CITY AND AUTHORIZING ADVERTISEMENT FOR BIDS OR TO OBTAIN QUOTE(S) TO REMOVE GOOSENECK TRAILER (VIN 5J2GS332XBE010639) AND YELLOW JCB 214E BACKHOE (VIN SLP214TCXE0466041) AT 6435 KALIPEKONA WAY (PARCEL NUMBERS 131A-1-03-053.000 THROUGH 131A-1-03-057.000) AND TO ASSESS THE COSTS TO THE SAID PROPERTY**

**WHEREAS**, the Mayor and City Council of the City of Diamondhead, Mississippi, (the "City"), pursuant to Mississippi Code Annotated §21-19-11, 1972, as amended, finds, determines, and adjudicates, based upon the investigation of the City's Building Department, that the abandoned construction equipment described below is such a menace to the public safety, and welfare of the citizenry of the City; and

**WHEREAS**, said abandoned construction equipment, as described herein, is within the corporate boundaries of the City of Diamondhead, Hancock County, Mississippi; and

**WHEREAS**, the abandoned construction equipment investigated by the Building Department and recommended by the Building Official for adjudication as being unsightly, noxious, and to be a menace to the public health, safety and welfare of the citizenry of the City is identified as:



Property located at 6435 Kalipekona Way (parcel numbers 131A-1-03-053.000 through 131A-1-03-057.000), Lots 83-87, Block 3, Diamondhead Phase 2, Unit 10. The property is owned by Bonnie F. Geerts.

**WHEREAS**, notice to the property owner was provided by the City pursuant to Mississippi Code Annotated §21-19-11, 1972, as amended, delivered by mail to Bonnie F. Geerts at 1322 State Street Jennings, LA 70546, posted on the property at 6435 Kalipekona Way by City of Diamondhead Development Coordinator, J. Pat Rich and notice posted on the bulletin board at City Hall, all within Diamondhead, Mississippi; and

**WHEREAS**, the Mayor and City Council of the City of Diamondhead further find, determine and adjudicate that advertisement for bids or obtaining quotes to remove the above referenced construction equipment should be made in the form and manner as provided by law; and

**WHEREAS**, the Mayor and City Council further find, determine, and adjudicate that the cost of removing the construction equipment, shall not exceed the aggregate amount of \$20,000.00 per parcel per calendar year or the fair market value of the property subsequent to removal, whichever is more. Said amount including a penalty shall be assessed as a lien against said property as provided by law and shall be enrolled in the office of the Circuit Clerk of Hancock County, Mississippi, as other judgments are enrolled, and in the office of the Chancery Clerk of Hancock County, Mississippi; and

**WHEREAS,** the Mayor and City Council of the City of Diamondhead further find, determine, and grant authority to the Building Department or designee to re-enter the properties for a period of two (2) years without any further hearings if notice is posted on these properties and at City Hall, 5000 Diamondhead Circle, Diamondhead, Mississippi 39525, at least seven (7) days prior to re-entering the properties for resolution of the same type of violation.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DIAMONDHEAD, MISSISSIPPI, AS FOLLOWS:**

**SECTION 1.** That the matters, facts, and things recited in the Preamble hereto are hereby adopted as the official findings of the Governing Authority.

**SECTION 2.** That the property at 6435 Kalipekona Way, be and hereby is declared to be a menace to the public health, safety, and welfare of the citizenry of the City of Diamondhead.

**SECTION 3.** That the City Clerk be and hereby is authorized to advertise for bids for bid or obtain quote(s) to remove the abandoned construction equipment described hereinabove and lying within the corporate boundaries of the City of Diamondhead, Hancock County, Mississippi.

**SECTION 4.** That the cost of removing of the herein described abandoned construction equipment, including any penalty assessed, shall be a lien against said properties as provided by law and shall be enrolled in the office of the Circuit Clerk of Hancock County, Mississippi, and in the office of the Chancery Clerk of Hancock County, Mississippi.

**SECTION 5.** That the Mayor and City Council of the City of Diamondhead further find, determine, and hereby grant authority to the Building Department or any designee thereof to re-enter the property for a period of two (2) years without any further hearings if notice is posted on this property and at City Hall, 5000 Diamondhead Circle, Diamondhead, Mississippi 39525, at least seven (7) days prior to re-entering the properties for resolution of the same type of violation.

Councilmember \_\_\_\_\_ moved for the adoption of the Resolution, which was seconded by Councilmember \_\_\_\_\_.

Upon being put to a roll call vote, the following ballots were cast:

	Aye	Nay	Absent
Councilmember Finley	_____	_____	_____
Councilmember Liese	_____	_____	_____
Councilmember Cumberland	_____	_____	_____
Councilmember Clark	_____	_____	_____
Councilmember Maher	_____	_____	_____
Mayor Depreo	_____	_____	_____

WHEREUPON the Mayor declared the Motion carried and the Resolution adopted,  
this the 16th day of August 2022.

ATTEST:

ADOPTED:

---

CITY CLERK

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MAYOR

June 8, 2023

Jon McCraw  
City Manager  
City of Diamondhead  
Via email to: [jmccraw@diamondhead.ms.gov](mailto:jmccraw@diamondhead.ms.gov)

Re: Diamondhead Dr. East Retention (Miller) Pond & Lily Pond Dredging  
JLB Contractors, LLC  
Pickering Firm, Inc. Project No. 26023.00 & 26024.00

Jon:

Transmitted herewith is a copy of Pay Application Three (3) for the above referenced project and contract. We recommend payment approval of this Estimate for JLB Contractors, LLC in the amount of \$149,132.14 by the City of Diamondhead at the next regularly scheduled board meeting.

Upon approval and City execution, please return a signed copy to us for our records. We appreciate the opportunity to serve you on this project. Should you have any questions concerning our recommendation, please do not hesitate to contact me.

Sincerely,

**PICKERING FIRM, INC.**



Anthony Greer  
Project Manager

Enclosures (1): JLB Contractors, LLC Pay App 3 & Updated Schedule

APPLICATION AND CERTIFICATE FOR PAYMENT  
AIA DOCUMENT G702

PAGE ONE OF TWO PAGES

TO: Pickering Engineering

PROJECT:

Diamondhead Dr. East Retention Pond  
and Lily Pond DredgingAPPLICATION NO: 3  
APPLICATION DATE: 05/25/23  
PERIOD TO: 4/25/23 to 5/24/23  
PROJECT NO: 23-004

FROM CONTRACTOR:

JLB Contractors, LLC  
21294 Johnson Road  
Long Beach, MS 39560

CONTRACT DATE: 02/20/23

CONTRACT FOR:

Pond Dredging

OWNER: City of Diamondhead

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$	579,322.00
2. Net change by Change Orders		\$0.00
3. CONTRACT SUM TO DATE (Line 1 +/- 2)		\$579,322.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	419,998.20
5. RETAINAGE:		
a. 5% of Completed Work (Column D + E on G703)	\$	20,999.91
b. 5% of Stored Material (Column F on G703)		\$0.00
TOTAL RETAINAGE (Lines 5a + 5b or Total in Column I of G703)		\$20,999.91
6. TOTAL EARNED LESS RETAINAGE		\$398,998.29
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)		\$249,866.15
8. CURRENT PAYMENT DUE		\$149,132.14
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)		\$180,323.71

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months		
Total approved this Month		
TOTALS:	\$0.00	
NET CHANGES by Change Order:		\$0.00

The undersigned Contractor certifies that to the best of the Contractor's 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.

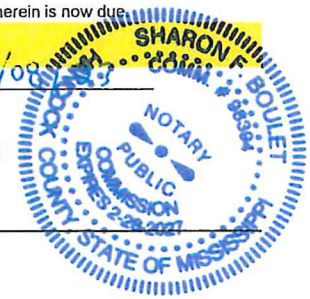
CONTRACTOR: JLB Contractors, LLC

By: 

Date: 06/08/2023

State of: Mississippi  
Subscribed and sworn to before me thisCounty of: Hancock  
8th day of June, 2023

Notary Public: Sharon J. Boulet



In accordance with the Contract Documents, based on on-site observations and the data comprising this 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

\$149,132.14

(Attach explanation if amount certified differs from amount applied for. Initial all figures on this Application and on the Continuation Sheet that changed to conform to the amount certified.)

ENGINEER:

By: 

Date: 6/8/2023

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.

Owner: (if applicable)

By: \_\_\_\_\_

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

## AIA DOCUMENT G703

**PAGE TWO OF TWO PAGES**

APPLICATION NO: 3

APPLICATION DATE: 05/25/23

PERIOD TO: 4/25/23 to 5/24/23

PROJECT NO: 23-004

[illegible]





DIGITAL ENGINEERING & IMAGING, INC.

Item No.5.

June 7, 2023

Mr. Jon McCraw  
City Manager  
City of Diamondhead  
5300 Diamondhead Circle  
Diamondhead, MS 39525

Re: Engineering Master Services Agreement (2021)  
Work Assignment No. 3 Beaux Vue Ph. 2 Drainage Improvements  
DE Invoice No.: 730-1001-33

Dear Mr. McCraw:  
Attached please find Invoice No. 33 for professional services on the above referenced project in the amount of **\$1,123.75** in accordance with our agreement.

Should you have questions or need additional information, please contact our office.

Sincerely,

DIGITAL ENGINEERING

A handwritten signature in cursive script that reads 'L. Bruce Newton'.

L. Bruce Newton, P.E., M.B.A.  
President

LBN/chc

cc: Mr. Robert J. Delaune

Enclosures

**Digital Engineering & Imaging, Inc.**

City of Diamondhead  
5300 Diamondhead Circle  
Diamondhead, MS 39525

June 07, 2023

Project No: B7301001.000

Invoice No: 33

Project B7301001.000 City of Diamondhead Master Services Agreement 2021

**Professional Services from April 30, 2023 to May 27, 2023**

Phase 003 Beaux Vue Ph. 2 Drainage Improvements

Task 05 Topo Survey

**Fee**

Billing Phase	Fee	Percent Complete	Earned	Previous Fee Billing	Current Fee Billing
Topo Survey	4,345.00	100.00	4,345.00	4,345.00	0.00
Total Fee	4,345.00		4,345.00	4,345.00	0.00
<b>Total Fee</b>					<b>0.00</b>
<b>Total this Task</b>					<b>0.00</b>

Task 20 Design

**Professional Personnel**

	Hours	Rate	Amount
Stein, John	7.75	145.00	1,123.75
Totals	7.75		1,123.75
<b>Total Labor</b>			<b>1,123.75</b>

**Billing Limits**

	Current	Prior	To-Date
Total Billings	1,123.75	19,070.00	20,193.75
Limit			22,612.00
Remaining			2,418.25
<b>Total this Task</b>			<b>\$1,123.75</b>
<b>Total this Phase</b>			<b>\$1,123.75</b>

**Billings to Date**

	Current	Prior	Total
Fee	0.00	4,345.00	4,345.00
Labor	1,123.75	19,070.00	20,193.75
<b>Totals</b>	<b>1,123.75</b>	<b>23,415.00</b>	<b>24,538.75</b>
<b>Total this Invoice</b>			<b>\$1,123.75</b>

Billing Backup

Digital Engineering & Imaging, Inc.

Wednesday, June 7, 2023

Invoice 33 Dated 6/7/2023

2:55:26 PM

Project	B7301001.000	City of Diamondhead Master Services Agreement 2021
Phase	003	Beaux Vue Ph. 2 Drainage Improvements
Task	20	Design

Professional Personnel			Hours	Rate	Amount	
0111	35 - Stein, John	4/3/2023	.50	145.00	72.50	
0111	35 - Stein, John	5/1/2023	4.00	145.00	580.00	
0111	35 - Stein, John	5/2/2023	3.00	145.00	435.00	
0111	35 - Stein, John	5/5/2023	.25	145.00	36.25	
	Totals		7.75		1,123.75	
	<b>Total Labor</b>					<b>1,123.75</b>

<b>Total this Task</b>	<b>\$1,123.75</b>
<b>Total this Phase</b>	<b>\$1,123.75</b>
<b>Total this Project</b>	<b>\$1,123.75</b>
<b>Total this Report</b>	<b>\$1,123.75</b>





DIGITAL ENGINEERING & IMAGING, INC.

Item No.5.

June 7, 2023

Mr. Jon McCraw  
City Manager  
City of Diamondhead  
5300 Diamondhead Circle  
Diamondhead, MS 39525

Re: Engineering Master Services Agreement (2021)  
Work Assignment No. 7 Bond Paving Project  
DE Invoice No.: 730-1001.007-04

Dear Mr. McCraw:

Attached please find Invoice No. 04 for professional services on the above referenced project in the amount of **\$15,000.00** in accordance with our agreement.

Should you have questions or need additional information, please contact our office.

Sincerely,

DIGITAL ENGINEERING

A handwritten signature in cursive script that reads 'L. Bruce Newton'.

L. Bruce Newton, P.E., M.B.A.  
President

LBN/chc

cc: Mr. Robert J. Delaune

Enclosures

**Digital Engineering & Imaging, Inc.**

City of Diamondhead  
 5300 Diamondhead Circle  
 Diamondhead, MS 39525

June 07, 2023

Project No: B7301001.007

Invoice No: 4

Project B7301001.007 COD\_Bond Paving Project

**Professional Services from April 30, 2023 to May 27, 2023**

Phase 010 Preliminary  
**Fee**

Billing Phase	Fee	Percent Complete	Earned	Previous Fee Billing	Current Fee Billing
Preliminary Design	40,845.00	100.00	40,845.00	40,845.00	0.00
Design	136,150.00	98.5173	134,131.25	119,131.25	15,000.00
Bidding	13,615.00	0.00	0.00	0.00	0.00
Construction Admin	75,000.00	0.00	0.00	0.00	0.00
Total Fee	265,610.00		174,976.25	159,976.25	15,000.00
<b>Total Fee</b>					<b>15,000.00</b>
<b>Total this Phase</b>					<b>\$15,000.00</b>
<b>Total this Invoice</b>					<b>\$15,000.00</b>

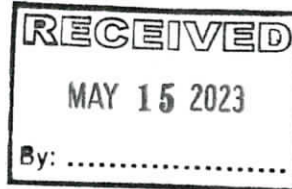
**Billings to Date**

	Current	Prior	Total
Fee	15,000.00	159,976.25	174,976.25
<b>Totals</b>	<b>15,000.00</b>	<b>159,976.25</b>	<b>174,976.25</b>



**INVOICE**  
**Pickering Firm, Inc.**  
 Facility Design • Civil Engineering • Surveying •  
 Transportation • Natural / Water Resources  
 126 Rue Magnolia, Biloxi, MS 39530  
 PH 228.432.5925 FAX 228.432.5928 www.pickeringfirm.com

City of Diamondhead  
 5000 Diamondhead Circle  
 Diamondhead, MS 39525



May 5, 2023  
 Project No: 26023.00  
 Invoice No: 0093289

Lily Pond Dredging  
 Work Assignment No. 00-06-2021  
 Work Assignment No. 00-06-2023

Client Contact: Michael Reso

**Professional Services from April 2, 2023 to April 2, 2023**

Task	001	Survey			
<b>Fee</b>					
Total Fee		7,500.00			
Percent Complete	100.00	Total Earned	7,500.00		
		Previous Fee Billing	7,500.00		
		Current Fee Billing	0.00		
		<b>Total Fee</b>			<b>0.00</b>
<b>Total this Task</b>					<b>0.00</b>
Task	002	Environmental Assessment			
<b>Billing Limits</b>		<b>Current</b>	<b>Prior</b>	<b>To-Date</b>	
Total Billings		0.00	5,321.00	5,321.00	
Limit				5,800.00	
Remaining				479.00	
<b>Total this Task</b>					<b>0.00</b>
Task	003	Engineering Design			
<b>Billing Limits</b>		<b>Current</b>	<b>Prior</b>	<b>To-Date</b>	
Total Billings		0.00	5,500.00	5,500.00	
Limit				5,500.00	
<b>Total this Task</b>					<b>0.00</b>
Task	004	Wetland Delineation			
<b>Fee</b>					
Total Fee		5,000.00			
Percent Complete	100.00	Total Earned	5,000.00		
		Previous Fee Billing	5,000.00		
		Current Fee Billing	0.00		
		<b>Total Fee</b>			<b>0.00</b>



Project	26023.00	Lily Pond Dredging	Invoice	0093289
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<b>Total this Task</b>	<b>0.00</b>
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Task	005	Specification Development
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**Billing Limits****Current****Prior****To-Date**

Total Billings

0.00

1,500.00

1,500.00

Limit

1,500.00

<b>Total this Task</b>	<b>0.00</b>
------------------------	-------------

Task	006	Bid Phase Services
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**Billing Limits****Current****Prior****To-Date**

Total Billings

0.00

4,000.00

4,000.00

Limit

4,000.00

<b>Total this Task</b>	<b>0.00</b>
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Task	007	CEI
------	-----	-----

**Professional Personnel****Hours****Rate****Amount**

PROJECT MANAGER

Greer, Anthony

34.00

115.00

3,910.00

PROFESSIONAL ENGINEER

Wagner, Cara

1.00

105.00

105.00

RESIDENT PROJECT REPRESENTATIVE

Keith, Austin

14.00

75.00

1,050.00

Totals

49.00

5,065.00

**Total Labor****5,065.00****Billing Limits****Current****Prior****To-Date**

Total Billings

5,065.00

5,702.50

10,767.50

Limit

16,125.00

Remaining

5,357.50

<b>Total this Task</b>	<b>\$5,065.00</b>
------------------------	-------------------

Task	008	Survey - Marking Property
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**Fee**

Total Fee	1,000.00
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Percent Complete	100.00	Total Earned	1,000.00
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Previous Fee Billing	1,000.00
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Current Fee Billing	0.00
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<b>Total Fee</b>	<b>0.00</b>
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<b>Total this Task</b>	<b>0.00</b>
------------------------	-------------

Task	009	Re-Bid Phase Services
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**Billing Limits****Current****Prior****To-Date**

Total Billings

0.00

3,000.00

3,000.00

Limit

3,000.00

Project	26023.00	Lily Pond Dredging	Invoice	0093289
Total this Task			0.00	
Total this Invoice			\$5,065.00	

**Outstanding Invoices**

Number	Date	Balance
0093152	4/11/2023	5,702.50
Total		5,702.50

Project 26023.00 Lily Pond Dredging Invoice 0093289

## Billing Backup

Pickering

Invoice 0093289 Dated 5/5/2023

Friday, May 5, 2023

1:38:21 PM

Task 007 CEI

### Professional Personnel

			Hours	Rate	Amount
PROJECT MANAGER					
02600	Greer, Anthony	4/3/2023	3.50	115.00	402.50
02600	Greer, Anthony	4/4/2023	4.00	115.00	460.00
02600	Greer, Anthony	4/5/2023	9.00	115.00	1,035.00
02600	Greer, Anthony	4/6/2023	2.00	115.00	230.00
02600	Greer, Anthony	4/7/2023	1.50	115.00	172.50
02600	Greer, Anthony	4/11/2023	2.00	115.00	230.00
02600	Greer, Anthony	4/12/2023	2.50	115.00	287.50
02600	Greer, Anthony	4/13/2023	1.00	115.00	115.00
02600	Greer, Anthony	4/14/2023	2.00	115.00	230.00
02600	Greer, Anthony	4/15/2023	1.00	115.00	115.00
02600	Greer, Anthony	4/18/2023	1.50	115.00	172.50
02600	Greer, Anthony	4/19/2023	1.00	115.00	115.00
02600	Greer, Anthony	4/25/2023	2.00	115.00	230.00
02600	Greer, Anthony	4/26/2023	1.00	115.00	115.00
PROFESSIONAL ENGINEER					
02031	Wagner, Cara	4/7/2023	.50	105.00	52.50
02031	Wagner, Cara	4/11/2023	.50	105.00	52.50
RESIDENT PROJECT REPRESENTATIVE					
02553	Keith, Austin	4/3/2023	7.00	75.00	525.00
02553	Keith, Austin	4/10/2023	3.00	75.00	225.00
02553	Keith, Austin	4/25/2023	4.00	75.00	300.00
Totals			49.00		5,065.00
Total Labor					5,065.00
Total this Task					\$5,065.00
Total this Project					\$5,065.00
Total this Report					\$5,065.00



## Detailed Timesheet for the Period Ending 4/8/2023

Friday, May 5, 2023

Pickering

1:49:18 PM

Employee 02600 Greer, Anthony S

26023.00  
007Lily Pond Dredging  
CEI

89117

Total Hr	Sun 4/2	Mon 4/3	Tue 4/4	Wed 4/5	Thu 4/6	Fri 4/7	Sat 4/8
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Client: City of Diamondhead

Reg	20.00		3.50	4.00	9.00	2.00	1.50	
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4/3 Monitoring construction.

4/4 Getting truck tickets together and RPR report for yesterday, then site visit for remainder of day.

4/5 Looking at work quantities completed to date; site visit for the day.

4/6 Misc. construction admin; pay app quantities, correspondence with Contractor.

4/7 Site visit.

# Detailed Timesheet for the Period Ending 4/15/2023

Pickering

Friday, May 5, 2023

1:52:08 PM

Employee 02600 Greer, Anthony S

26023.00  
007

Lily Pond Dredging  
CEI

89117

Total Hr	Sun 4/9	Mon 4/10	Tue 4/11	Wed 4/12	Thu 4/13	Fri 4/14	Sat 4/15
-------------	------------	-------------	-------------	-------------	-------------	-------------	-------------

Client: City of Diamondhead

Reg	8.50		2.00	2.50	1.00	2.00	1.00
-----	------	--	------	------	------	------	------

- 4/11 Construcion admin; pay application 1
- 4/12 Site visit; misc. related to the construction project.
- 4/13 Misc. related to construction project.
- 4/14 Site visit.
- 4/15 RPR reports/photos; tallied truck tickets to date.

# Detailed Timesheet for the Period Ending 4/22/2023

Friday, May 5, 2023  
1:53:45 PM

Pickering

Employee 02600 Greer, Anthony S

26023.00 Lily Pond Dredging  
007 CEI  
89117

Total Hr	Sun 4/16	Mon 4/17	Tue 4/18	Wed 4/19	Thu 4/20	Fri 4/21	Sat 4/22
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Client: City of Diamondhead

Reg	2.50		1.50	1.00			
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4/18 Site visit.  
4/19 Picked up truck tickets from contractor.



# Detailed Timesheet for the Period Ending 4/29/2023

Friday, May 5, 2023  
1:55:01 PM

Pickering

Employee 02600 Greer, Anthony S

26023.00  
007

Lily Pond Dredging  
CEI

89117

Total Hr	Sun 4/23	Mon 4/24	Tue 4/25	Wed 4/26	Thu 4/27	Fri 4/28	Sat 4/29
-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------

Client: City of Diamondhead

Reg	3.00			2.00	1.00		
-----	------	--	--	------	------	--	--

4/25 Pay app #2 quantities & truck tickets.  
4/26 Correspondence with City & Contractor.

Detailed Timesheet for the Period Ending 4/8/2023

Friday, May 5, 2023  
1:56:37 PM

Pickering

Employee                      02031                      Wagner, Cara

26023.00  
007

Lily Pond Dredging  
CEI

89206

Client: City of Diamondhead

Total Hr	Sun 4/2	Mon 4/3	Tue 4/4	Wed 4/5	Thu 4/6	Fri 4/7	Sat 4/8
Reg						.50	

4/7 mtg w/City

# Detailed Timesheet for the Period Ending 4/15/2023

Friday, May 5, 2023  
1:58:22 PM

Pickering

Employee 02031 Wagner, Cara

26023.00  
007

Lily Pond Dredging  
CEI

89206

Total Hr	Sun 4/9	Mon 4/10	Tue 4/11	Wed 4/12	Thu 4/13	Fri 4/14	Sat 4/15
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Client: City of Diamondhead

Reg	.50			.50			
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4/11 review and respond to email



Detailed Timesheet for the Period Ending 4/8/2023

Friday, May 5, 2023  
1:59:45 PM

Pickering

Employee	02553	Keith, Austin A
26023.00	Lily Pond Dredging	
007	CEI	Client: City of Diamondhead
89116	Reg	
	4/3 CEI on site	

Total Hr	Sun 4/2	Mon 4/3	Tue 4/4	Wed 4/5	Thu 4/6	Fri 4/7	Sat 4/8
7.00		7.00					

# Detailed Timesheet for the Period Ending 4/15/2023

Friday, May 5, 2023  
2:00:38 PM

Pickering

Employee                      02553                      Keith, Austin A

26023.00  
007

Lily Pond Dredging  
CEI

89116

Total Hr	Sun 4/9	Mon 4/10	Tue 4/11	Wed 4/12	Thu 4/13	Fri 4/14	Sat 4/15
-------------	------------	-------------	-------------	-------------	-------------	-------------	-------------

Client: City of Diamondhead

Reg	3.00		3.00				
-----	------	--	------	--	--	--	--

4/10 On site CEI, collecting truck tickets.

Detailed Timesheet for the Period Ending 4/29/2023

Friday, May 5, 2023  
2:05:25 PM

Pickering

Employee                    02553                    Keith, Austin A

Signed \_\_\_\_\_

Approved \_\_\_\_\_

Posted

Profit Center            07:E7:89

26023.00  
007

Lily Pond Dredging  
CEI

89116

Total Hr	Sun 4/23	Mon 4/24	Tue 4/25	Wed 4/26	Thu 4/27	Fri 4/28	Sat 4/29
-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------

Client: City of Diamondhead

Reg	4.00			4.00			
-----	------	--	--	------	--	--	--

4/25 On site to with contractor to discuss quantities. Reviewing quantities submitted.





# Diamondhead Police Department

5000 Diamondhead Circle, Diamondhead, MS 39525  
(228) 222-4649 Fax (228) 222-4654



May 22, 2023

To Whom It May Concern,

Please allow this letter to show that the Diamondhead Police Department is wanting to dispose of old police vehicles that are no longer in use. Several vehicles have maintenance issues and some need repairs that aren't cost effective to complete. With the Hancock County Sheriff's Office assisting with some vehicle maintenance, I feel that we should sell these three (3) Explorers to them for \$1.00 each. Unit #642 2014 Ford Explorer VIN#1FM5K8AR1EGA14642 V6 3.71, Unit #538 2014 Ford Explorer VIN#1FM5K8AR2EG25538 V6 3.71, and Unit #109 2016 Ford Explorer VIN#1FM5K8ARGGA97109 V6 3.71. Thanks for your consideration on this matter.

Respectfully,

Darryl Russell

### COMMERCIAL LEASE AGREEMENT

THIS AGREEMENT made, entered into and executed this the 20th day of June 2023, by and between Diamondhead Country Club & Property Owners Association Inc. (hereinafter "Lessor"), and City of Diamondhead, Mississippi, (hereinafter "Lessee"). Lessors and Lessee contract and agree as follows:

1. Lessor hereby leases unto Lessee the following land and any improvements thereon (hereinafter "the leased property"): Unimproved land located North of Interstate 10 in Diamondhead, Mississippi more particularly described as: Noma Drive ballfield, 132 -0-09-001.003.
2. The term of this lease shall be for a primary term of ten (10) years, commencing on June 21, 2023, and expiring at midnight on June 20, 2033. This lease will extend automatically at the end of the primary term for a second term of ten (10) years and for additional one (1) year terms thereafter unless terminated by either party in writing at least 30 days in advance of the expiration date.
3. During the primary term, Lessee shall pay to Lessors, as rental, the sum of One Dollar (\$1.00) per year, in advance, on or before the first day of the lease term.
4. The leased property may be used for the following purposes and for no other purposes: Sponsored Events held by the City of Diamondhead, Mississippi, including but not limited to: City Dog Park, Youth Recreational Sports Leagues, City BBQ Contest; Cruisin' the Coast; festivals; or other lawful purpose approved by Lessor. Lessee shall provide security for all Sponsored Events held by the City of Diamondhead, Mississippi.
5.
  - (A) Indemnity: Lessor and Lessee shall indemnify and save harmless the other from any and all losses, fines, suits, damages, expenses, claims, demands and actions of any kind resulting from their negligence, breach, or violation or non-performance of any condition hereof.
  - (B) Insurance: Lessee shall, during the entire term of the Lease keep in full force and effect a policy of public liability insurance with respect to the Property. Such coverage shall include a broad form general liability endorsement. The policy shall contain a clause that the Lessee will not cancel or change the insurance without first giving the Lessors ten (10) days prior written notice.

Duplicate originals or certificates of insurance of the policies provided shall be furnished by Lessee to Lessor.

6. Lessee shall be allowed to install utilities (water, electricity, etc.) on the property and Lessee shall pay for all water, electricity, and other utilities used on the premises. Upon the termination of this Lease, Lessee shall remove all utilities and return the property to its original state.
7. Alterations and Repairs: Lessee shall maintain the property to include cutting grass; picking up litter; and other common upkeep. Lessee shall be allowed to spread dirt and sand on property to keep property in usable condition; construct fencing; and, construct a dog park and/or other recreational facilities. All repairs and maintenance are to be made by Lessee at Lessee's expense.
8. Lessee will keep the leased property in a clean and wholesome condition and will comply at all times with all lawful health and police regulations.

Lessee shall promptly comply with all of the ordinances of the City of Diamondhead, Hancock County, Mississippi, or of any other governmental body applicable for said premises and to all ordinances and requirements enforced by the state board of health, sanitary, fire or police departments of the City of Diamondhead for the correction, prevention and abatement of nuisances in and about or connected with the Property because of Lessee's use thereof during the term of this Agreement, all at Lessee's expense. Lessee shall provide for the removal of its own trash, waste paper, boxes and cartons and shall not permit any accumulation of such materials. Lessee shall not engage in any act which shall constitute a nuisance.



9. If Lessee shall make default in the payment of the rent, or any part thereof or any other sums due under the terms hereof, when due as herein provided, or in any of the other covenants, agreements, conditions or undertakings herein contained, and such default shall continue for thirty days after notice thereof in writing to Lessee, or if (a) any proceeding under the bankruptcy act of the United States is begun by or against the Lessee, and an order of adjudication, or order approving the petition, be entered in such proceedings, or (b) a receiver or trustee is appointed for substantially all of the Lessee's business or assets, or (c) if Lessee shall make an assignment for the benefit of creditors, or (d) if Lessee shall vacate or abandon the leased property, then, and in any such event, it shall be lawful for the Lessor, at his election, to declare the term hereof ended and to re-enter the leased property, and to repossess and enjoy the said premises and any buildings and improvements situated thereon without such a re-entry and repossession working a forfeiture of the rents to be paid and the covenants to be performed by the Lessee during the full term of this agreement. If any default shall be made in any covenant, agreement, condition, or undertaking which cannot with due diligence be cured within a period of 30 days, and if notice thereof in writing shall have been given to the Lessee, and if the Lessee, prior to the expiration of 30 days from and after the giving of such notice, shall commence to satisfy the cause of such default and shall proceed diligently and with reasonable dispatch to take all steps and do all work required to cure such default, then the Lessor shall not have the right to declare said term ended by reason of such default; provided, however, that the curing of any default in such manner shall not be construed to limit or restrict the right of Lessors to declare the said term ended and enforce all of their rights and remedies hereunder for any other default not so cured.

The foregoing provision for the termination of this lease for any default in any of its covenants shall not operate to exclude or suspend any other remedy of the Lessor for breach of any of said covenants, or for the recovery of said rent for the full term, and in the event of the termination or default in any of the terms of this lease as aforesaid.

This lease is subject to ratification by each subsequent City Council taking office after the start date of this agreement.

10. Lessee shall permit Lessor and his agents to enter the Property at all reasonable times for any of the following purposes to inspect the same: (i) to maintain the property, (ii) to make repairs to the Property as the Lessor is obligated or may elect to make, and (iii) to post notices of non-responsibility for alterations or additions or repairs.
11. If Property, including improvements thereon, are injured by fire or other casualty, Lessee shall have the exclusive right and option to either terminate this Agreement or reconstruct and/or repair the said damaged improvements and continue this Lease under its terms and conditions as if no such casualty occurred by giving written notice to Lessors of Lessee's intention to so continue this Lease within thirty (30) days after the date of said damage or casualty. In the event that Lessee so elects to continue this Lease, any insurance proceeds payable as a result of said fire or casualty shall be first applied to pay the reconstruction or repair of said improvements, and any balance of such insurance proceeds after payment of said reconstruction or repair shall be paid to whoever owns the insurance policy under which payment is made.
12. If, during the term of this Agreement, the Property shall be taken or condemned, either in whole or part, by competent authorities for public or quasi-public use, Lessee shall have the option to terminate this Agreement as of the date of taking. If Lessee elects not to terminate this Agreement, then this Agreement shall continue in full force and effect.
13. It is understood and agreed that the relationship of the parties hereto is strictly that of Lessor and Lessee and that the Lessor has no ownership in the Lessee's enterprise and the Agreement shall not be construed as a joint venture or partnership. The Lessee is not and shall not be deemed to be an agent or representative of the Lessor.



14. All covenants, conditions and agreements and undertakings contained in this Agreement shall extend to and be binding on the respective heirs, successors and assigns of the respective parties hereto the same as if they were in every case named and expressed except as noted above with respect to future City Councils.
15. It is further understood and agreed by and between the Lessor and Lessee that, on account of breach or default by either party of any of their obligations hereunder, it shall become necessary for the other party to employ and/or consult with an attorney to give advice, or to enforce or demand any of either party's rights or remedies hereunder, then, and in any such event, the defaulting or breaching party shall pay all attorney fees, court costs and other expenses occasioned by such default(s) or breach(es).
16. Written notice to Lessee, all rent checks and all notices from Lessee to Lessors shall be served or sent to:  
Jon McCraw, City Manager  
5000 Diamondhead Circle  
Diamondhead, MS 39525

Until further written notice to Lessor, all notices from Lessors to Lessee shall be served or sent to Lessee at the following address:

Diamondhead Country Club & POA Inc.  
7600 Country Club Circle  
Diamondhead, MS 39525

All notices to be given under this Agreement shall be in writing and shall be served personally or sent by United States certified or registered mail.

17. This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any other manner other than by agreement in writing signed by all parties hereto or their respective successors in interest.
18. If any section, paragraph, sentence or portion of this Agreement or the application thereof to any party or circumstance shall, to any extent, be or become invalid or illegal, such provision is and shall be null and void, but, to the extent that said null and void provisions do not materially change the overall agreement and intent of this entire agreement, the remainder of this Agreement shall not be affected thereby and each remaining provision of this Agreement shall be valid and enforceable to the fullest extent provided by law.
19. This Agreement shall be governed in accordance with the laws of the State of Mississippi.
20. Lessee shall have the right to make such alterations and improvements to the Property as it deems necessary or desirable upon giving written notice of same to Lessor. Such alterations and improvements shall comply with all applicable construction laws and regulations and shall conform generally with the existing improvements on the Property. The Lessee shall keep the Property free from any and all liens arising out of the work performed or materials furnished in making such improvements. Lessee shall be responsible for payment of the costs of any said improvements to the Property.
21. Additional Provisions:  
  
Lessee is responsible for its own security upon the premises and hereby agrees to indemnify and protect Lessor from any claims or suits asserted against Lessor for lack thereof.

[Signature Page to Follow]

WITNESS the signatures of the parties, this the \_\_\_\_ day of \_\_\_\_\_, 2023.

LESSOR:

*Ernie Knobloch*  
Diamondhead Country Club & Property Owners  
Association Inc.

LESSEE:

\_\_\_\_\_  
City of Diamondhead, Mississippi

By:

*ERNIE KNOBLOCH*  
Title: *PRESIDENT*

By: Jon McCraw

Title: City Manager



Covington Civil & Environmental, LLC  
2300 14th Street  
Gulfport, MS 39501  
228-396-0486

<b>Project Title</b>		Site Development Plan Reviews			
<b>Project Number</b>		16175.08			
<b>Invoice #</b>		16175.08-60			
Budgeted Tasks	Budget	Previously Billed	Current Invoice	Balance Remaining	Percentage Complete
Site Development Reviews	\$ 29,500.00	\$ 20,859.75	\$ 5,607.50	\$ 3,032.75	90%
Total	\$ 29,500.00	\$ 20,859.75	\$ 5,607.50	\$ 3,032.75	90%



2300 14th Street  
Gulfport, MS 39501

Bill To:

City of Diamondhead

# Invoice

Item No.9.

Invoice #: 16175.08-60

Invoice Date: 6/7/2023

Due Date: 7/7/2023

Project: WA # 17 - Site Develop...

P.O. Number: 2023-0029

Terms: Net 30

Description	Hours/Qty	Rate	Amount
Site Development Plan Services Provided 04/01/2023 - 05/31/2023 PO 2023-0029			
Andrew Levens, Senior Engineer	38.5	145.00	5,582.50
Kim Goodman, Administrative	0.5	50.00	25.00

All payments are due by "Due Date" shown on invoice.  
Finance fees will be charged for all payments received past  
"Due Date". Please call 228-396-0486 with any questions  
about invoice.

Total \$5,607.50

Payments/Credits \$0.00

Balance Due \$5,607.50



# Covington Civil & Environmental, LLC

## TIME AND EXPENSES

Item No.9.

### FILTERS USED :

**Project In :** 16175.08 City of DiamondheadWA 17 | Site Development Plan  
and **Time Expense Date In :** 4/1/2023 To 5/31/2023  
and **Billable :** Yes

\* A=Approved , B= Billable , S= Submit , Bd= Billed

DATE	ITEM	DESCRIPTION	HRS/UNITS	RATE	CHARGE AMOUNT	*
<b>16175.08 City of DiamondheadWA 17   Site Development Plan</b>						
<b>Andrew Levens</b>						
<b>SERVICES</b>						
5/30/2023	Sr. Engineer:	Senior Engineer	1.50	\$145.00	\$217.50	S B
		Deer Crossing bond meeting with city				
5/26/2023	Sr. Engineer:	Senior Engineer	1.50	\$145.00	\$217.50	A B
		Meeting at DH Lakes Ph 1 for 2 & 3 grading				
5/22/2023	Sr. Engineer:	Senior Engineer	1.50	\$145.00	\$217.50	A B
		Apelehama Cir Fitzgerald Property - Correspondence on site visit				
5/18/2023	Sr. Engineer:	Senior Engineer	2.00	\$145.00	\$290.00	A B
		Meeting with Horton at the Preserve Ph 1 for grading concerns				
5/12/2023	Sr. Engineer:	Senior Engineer	1.00	\$145.00	\$145.00	A B
		Preserve Ph 1 grading plan review and correspondence				
5/10/2023	Sr. Engineer:	Senior Engineer	1.50	\$145.00	\$217.50	A B
		Ahi Drive/Alu Court - Required drainage improvements				
5/9/2023	Sr. Engineer:	Senior Engineer	0.50	\$145.00	\$72.50	A B
		Mauana Kea - Correspondence with developer				
5/4/2023	Sr. Engineer:	Senior Engineer	3.00	\$145.00	\$435.00	A B
		DH Lakes Ph 1 - Meeting with Developer to address issues/concerns with side slopes, drainage and sidewalk				
		Mauna Kea - Developer correspondence				
		6424 Iona St - Drainage inspection response				

GROUPED BY Project, Employee

# Covington Civil & Environmental, LLC

## TIME AND EXPENSES

Item No.9.

\* A=Approved , B= Billable , S= Submit , Bd= Billed

DATE	ITEM	DESCRIPTION	HRS/UNITS	RATE	CHARGE AMOUNT	*
<b>16175.08 City of DiamondheadWA 17   Site Development Plan</b>						
<b>Andrew Levens</b>						
<b>SERVICES</b>						
5/3/2023	Sr. Engineer:	Senior Engineer	1.00	\$145.00	\$145.00	A B
		0.5- Coordinating meeting for DH Lakes Ph 1				
		0.5- Mauna Kea Townhomes correspondence with developer				
5/2/2023	Sr. Engineer:	Senior Engineer	1.00	\$145.00	\$145.00	A B
		Deer Crossing Lot 11 - Inspection and response on driveway under review				
5/1/2023	Sr. Engineer:	Senior Engineer	1.50	\$145.00	\$217.50	A B
		1- Preserve Ph 2 meeting with Developer and Developer's engineer				
		0.5- DH Lakes Ph 2 & 3 - Review coordination				
4/28/2023	Sr. Engineer:	Senior Engineer	1.50	\$145.00	\$217.50	A B
		Meeting for DH Lakes connection to Golf Club Drive				
4/26/2023	Sr. Engineer:	Senior Engineer	0.50	\$145.00	\$72.50	A B
		Correspondence on DH Lakes construction issues				
4/25/2023	Sr. Engineer:	Senior Engineer	2.50	\$145.00	\$362.50	A B
		1.5- Site visit for home site construction at Alu Court and Ahi Drive				
		1- Inspection of homeowner drainage concern at 6424 Iona St				
4/25/2023	Sr. Engineer:	Senior Engineer	1.50	\$145.00	\$217.50	A B
		1- Ahi Dr/Alu Ct proposed home site review and correspondence				
		0.5- Dh Lakes connection to Golf Club Drive review and comments				
4/24/2023	Sr. Engineer:	Senior Engineer	1.00	\$145.00	\$145.00	A B
		Meeting with Duke Levy on Mauna Kea Townhomes				
4/18/2023	Sr. Engineer:	Senior Engineer	3.00	\$145.00	\$435.00	A B
		Review of DH Lakes Ph 1 issues; Alu Ct/Ahi Dr home site review				
4/17/2023	Sr. Engineer:	Senior Engineer	1.00	\$145.00	\$145.00	A B
		Review of Elliott Homes road connection to Golf Club Drive				

GROUPED BY Project, Employee

# Covington Civil & Environmental, LLC

## TIME AND EXPENSES

Item No.9.

\* A=Approved , B= Billable , S= Submit , Bd= Billed

DATE	ITEM	DESCRIPTION	HRS/UNITS	RATE	CHARGE AMOUNT	*
<b>16175.08 City of DiamondheadWA 17   Site Development Plan</b>						
<b>Andrew Levens</b>						
<b>SERVICES</b>						
4/13/2023	Sr. Engineer:	Senior Engineer	1.50	\$145.00	\$217.50	A B
		<i>Review of DH Lakes Ph 1 file with City</i>				
4/12/2023	Sr. Engineer:	Senior Engineer	4.00	\$145.00	\$580.00	A B
		<i>DH Lakes Ph 1 - Field inspection; Preparing for presentation to City; DH Lakes easement exhibit to Golf Club Dr review</i>				
4/11/2023	Sr. Engineer:	Senior Engineer	1.00	\$145.00	\$145.00	A B
		<i>DH Lakes Ph 1 - Lot 4-6 as-built grading plan review</i>				
4/10/2023	Sr. Engineer:	Senior Engineer	1.00	\$145.00	\$145.00	A B
		<i>DH Lakes Ph 1 correspondence</i>				
4/4/2023	Sr. Engineer:	Senior Engineer	2.50	\$145.00	\$362.50	A B
		<i>Residential home site review and response; Preserve CPU review and response</i>				
4/3/2023	Sr. Engineer:	Senior Engineer	1.50	\$145.00	\$217.50	A B
		<i>0.5-Bond paving project correspondence</i>				
		<i>1-Review of lots for residential development</i>				
<b>Total Services:</b>			<b>38.50</b>		<b>\$5,582.50</b>	
<b>Andrew Levens Total:</b>			<b>38.50</b>		<b>\$5,582.50</b>	
<b>Kim Goodman</b>						
<b>SERVICES</b>						
4/18/2023	Administrative:	Administrative	0.50	\$50.00	\$25.00	A B
		<i>financial oversight, project admin</i>				
<b>Total Services:</b>			<b>0.50</b>		<b>\$25.00</b>	
<b>Kim Goodman Total:</b>			<b>0.50</b>		<b>\$25.00</b>	

GROUPED BY Project, Employee

# Covington Civil & Environmental, LLC

## TIME AND EXPENSES

Item No.9.

\* A=Approved , B= Billable , S= Submit , Bd= Billed

DATE	ITEM	DESCRIPTION	HRS/UNITS	RATE	CHARGE AMOUNT	*
	16175.08	City of DiamondheadWA 17   Site Development Plan Total:	39.00		\$5,607.50	
		Total Services For 16175.08 City of DiamondheadWA 17   Site Development Plan:	39.00		\$5,607.50	
		Grand Total Billable Services:	39.00		\$5,607.50	

GROUPED BY Project, Employee





Covington Civil & Environmental, LLC  
2300 14th Street  
Gulfport, MS 39501  
228-396-0486

Project Title Project Number Invoice #		Standard Specifications and Drawings			
		16175.08			
		16175.08-61			
Budgeted Tasks	Budget	Previously Billed	Current Invoice	Balance Remaining	Percentage Complete
Develop Standard Drawings and Specifications	\$ 28,000.00	\$ -	\$ 7,000.00	\$ 21,000.00	25%
Develop Bid Package	\$ 12,000.00	\$ -	\$ -	\$ 12,000.00	0%
Bidding	\$ 8,000.00	\$ -	\$ -	\$ 8,000.00	0%
Total	\$ 28,000.00	\$ -	\$ 7,000.00	\$ 21,000.00	25%



2300 14th Street  
Gulfport, MS 39501

Bill To:

City of Diamondhead

# Invoice

Item No.9.

Invoice #: 16175.08-61

Invoice Date: 6/7/2023

Due Date: 7/7/2023

Project: WA 23 Unit Price Contract

P.O. Number: 2023-0235

Terms: Net 30

Description	Hours/Qty	Rate	Amount
Standard Specifications and Drawings Services Provided through 05/31/2023 PO 2023-0235			
Develop Standard Drawings and Specifications	0.25	28,000.00	7,000.00
Develop Bid Package	0	12,000.00	0.00
Bidding	0	8,000.00	0.00

All payments are due by "Due Date" shown on invoice.  
Finance fees will be charged for all payments received past  
"Due Date". Please call 228-396-0486 with any questions  
about invoice.

Total \$7,000.00

Payments/Credits \$0.00

Balance Due \$7,000.00



Covington Civil & Environmental, LLC  
2300 14th Street  
Gulfport, MS 39501  
228-396-0486

Project Title Project Number Invoice #	Commercial District Transformation Project					
	16383.08					
	16383.08-16					
Budgeted Tasks	Budget	Previously Billed	Current Invoice	Total Billed to Date	Balance Remaining	Percentage Complete
Task 1 - Topographic and Boundary Surveying	\$ 63,000.00	\$ 63,000.00	\$ -	\$ 63,000.00	\$ -	100.00%
Task 2 - Preliminary Design and Conceptual Roadway Alignment Plan	\$ 34,500.00	\$ 34,500.00	\$ -	\$ 34,500.00	\$ -	100.00%
Task 3 - Permitting	\$ 31,000.00	\$ 17,050.00	\$ 13,950.00	\$ 31,000.00	\$ -	100.00%
Task 4 - Land Acquisition Support Documents	\$ 19,500.00	\$ 12,881.25	\$ -	\$ 12,881.25	\$ 6,618.75	66.06%
Task 5 - Geotechnical Investigations	\$ 5,040.00	\$ 5,040.00	\$ -	\$ 5,040.00	\$ -	100.00%
Task 6 - Roadway Design Plans	\$ 212,460.00	\$ 202,648.20	\$ 6,373.80	\$ 209,022.00	\$ 3,438.00	98.38%
Task 7 - Bidding	\$ 9,500.00	\$ 95.00	\$ -	\$ 95.00	\$ 9,405.00	1.00%
Task 8 - Construction Engineering and Inspection	\$ 245,000.00	\$ -	\$ -	\$ -	\$ 245,000.00	0.00%
<b>Total</b>	<b>\$ 620,000.00</b>	<b>\$ 335,214.45</b>	<b>\$ 20,323.80</b>	<b>\$ 355,538.25</b>	<b>\$ 264,461.75</b>	<b>57%</b>
<p>*Task 8 is based on a 12-month construction schedule.</p> <p>Tasks 1, 2, 3 5, 6 and 7 shall be billed as a fixed fee lump sum cost based on percentage complete.</p> <p>Tasks 4 and 8 shall be billed per the attached rate schedule</p> <p>**\$15,500 of funds moved from Task 4 to Task 3. \$25,000 from Task 4 to Task 6</p> <p>***\$5,460 moved from Task 5 to Task 6</p>						





2300 14th Street  
Gulfport, MS 39501

**Bill To:**

City of Diamondhead

# Invoice

Item No.9.

**Invoice #:** 16383.08-16

**Invoice Date:** 6/14/2023

**Due Date:** 7/14/2023

**Project:** 16383.08 Commercial Di...

**P.O. Number:**

**Terms:** Net 30

Description	Hours/Qty	Rate	Amount
Commercial District Transformation Project Professional Engineering Services Services Provided 02/01/2023 - 05/31/2023			
Task 3 - Permitting	0.45	31,000.00	13,950.00
Task 4 - Land Acquisition Support Documents	0	0.00	0.00
Task 5 - Geotechnical Investigations	0	5,040.00	0.00
Task 6 - Roadway Design Plans	0.03	212,460.00	6,373.80
Task 7 - Bidding	0	9,500.00	0.00
Task 8 - Construction Engineering and Inspection	0	245,000.00	0.00

All payments are due by "Due Date" shown on invoice.  
Finance fees will be charged for all payments received past  
"Due Date". Please call 228-396-0486 with any questions  
about invoice.

**Total** \$20,323.80

**Payments/Credits** \$0.00

**Balance Due** \$20,323.80



Covington Civil & Environmental, LLC  
2300 14th Street  
Gulfport, MS 39501  
228-396-0486

Project Title Project Number Invoice #	Commercial District Transformation Project - Noma Drive Improvements					
	16383.08					
	16383.08-17					
Budgeted Tasks	Budget	Previously Billed	Current Invoice	Total Billed to Date	Balance Remaining	Percentage Complete
Task 1 - Topographic and Boundary Surveying	\$ 24,000.00	\$ 12,000.00	\$ -	\$ 12,000.00	\$ 12,000.00	50.00%
Task 2 – Preliminary Design	\$ 29,800.00	\$ 1,490.00	\$ 28,310.00	\$ 29,800.00	\$ -	100.00%
Task 3 - Permitting	\$ -	\$ -	\$ -	\$ -	\$ -	N/A
Task 4 - Land Acquisition Support Documents	\$ -	\$ -	\$ -	\$ -	\$ -	N/A
Task 5 - Geotechnical Investigations	\$ 12,000.00	\$ 8,400.00	\$ 3,600.00	\$ 12,000.00	\$ -	100.00%
Task 6 - Final Design	\$ 41,500.00	\$ -	\$ 10,375.00	\$ 10,375.00	\$ 31,125.00	25.00%
Task 7 - Bidding	\$ 6,800.00	\$ -	\$ -	\$ -	\$ 6,800.00	0.00%
Task 8 - Construction Engineering and Inspection	\$ 75,600.00	\$ -	\$ -	\$ -	\$ 75,600.00	0.00%
<b>Total</b>	<b>\$ 189,700.00</b>	<b>\$ 21,890.00</b>	<b>\$ 42,285.00</b>	<b>\$ 64,175.00</b>	<b>\$ 125,525.00</b>	<b>34%</b>
<p>*Task 8 is based on a 12-month construction schedule.</p> <p>Tasks 1, 2, 5, and 7 shall be billed as a fixed fee lump sum cost based on percentage complete.</p> <p>Task 4 and 8 shall be billed per the attached rate schedule</p>						



2300 14th Street  
Gulfport, MS 39501

**Bill To:**

City of Diamondhead

# Invoice

Item No.9.

**Invoice #:** 16383.08-17

**Invoice Date:** 6/14/2023

**Due Date:** 7/14/2023

**Project:** 16383.08 Commercial Di...

**P.O. Number:**

**Terms:** Net 30

Description	Hours/Qty	Rate	Amount
Commercial District Transformation Project - Noma Drive Improvements Professional Engineering Services Services Provided 02/01/2023 - 05/31/2023			
Task 1 - Topographic and Boundary Survey	0	24,000.00	0.00
Task 2 - Design Phase	0.95	29,800.00	28,310.00
Task 3 - Permitting	0	0.00	0.00
Task 4 - Land Acquisition Documents	0	0.00	0.00
Task 5 - Geotechnical Investigations	0.3	12,000.00	3,600.00
Task 6 - Final Design	0.25	41,500.00	10,375.00
Task 7 - Bidding	0	6,800.00	0.00
Task 8 - Construction Engineering and Inspection	0	75,600.00	0.00

All payments are due by "Due Date" shown on invoice. Finance fees will be charged for all payments received past "Due Date". Please call 228-396-0486 with any questions about invoice.

**Total** \$42,285.00

**Payments/Credits** \$0.00

**Balance Due** \$42,285.00



CHANGE ORDER

No. 004

DATE OF ISSUANCE: June 14, 2023

EFFECTIVE DATE

OWNER: City of Diamondhead

CONTRACTOR: Huey P. Stockstill, LLC

PROJECT: City of Diamondhead Roadway Improvements Ph.4

OWNER's Contract No.: ENGINEER's Contract No.

ENGINEER: Digital Engineering

You are directed to make the following changes in the Contract Documents:

Description: Add 31 calendar days to the contract time.

Reason for Change Order: The contractor has been delayed by ongoing construction projects on Bayou Dr. and Haleiwa Pl.

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price	Original Contract Times: 90 Calendar Days
\$ 729,975.00	Substantial Completion: December 17, 2022
	Ready for final payment: 30 Days
	(days or dates)
Net Increase (Decrease) from previous Change Orders	Net change from previous Change Orders No. 0 to No. 3 :
No. ____ to ____:	Substantial Completion: 195
\$ 0.00	Ready for final payment: 0
	(days)
Contract Price prior to this Change Order:	Contract Times prior to this Change Order 150 Calendar Days
\$ 729,975.00	Substantial Completion: : June 30, 2023
	Ready for final payment: 30 Days
	(days or dates)
Net increase (decrease) of this Change Order:	Net increase (decrease) this Change Order:
\$ 0	Substantial Completion: 31
	Ready for final payment: 0
	(days)
Contract Price with all approved Change Orders:	Contract Times with all approved Change Orders:
\$ 729,975.00	Substantial Completion: July 31, 2023
	Ready for final payment: 30 Days
	(days or dates)

The Contractor's cost breakdown has been reviewed by the Engineer, and the Engineer has certified that the incremental cost is sufficiently detailed, accurate, fair, and reasonable to accept "as-is."

ACCEPTED:

By: 

CONTRACTOR (Authorized Signature)

Date: 6/14/23

RECOMMENDED:

By: 

ENGINEER (Authorized Signature)

Date: 6/14/23

APPROVED:

By: \_\_\_\_\_

OWNER (Authorized Signature)

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

**AMENDMENT TO OWNER-ENGINEER AGREEMENT****AMENDMENT TO OWNER-ENGINEER AGREEMENT****Amendment No. 2**

Owner: **City of Diamondhead**  
 Engineer: **Covington Civil and Environmental**  
 Project: **Commercial District Transformation Project**  
 Effective Date of Owner-Engineer Agreement: **April 6, 2021**  
 Nature of Amendment: (Check those that apply)

- ☒ Additional Services to be performed by Engineer  
☐ Modifications to services of Engineer  
☐ Modifications to responsibilities of Owner  
☒ Modifications of payment to Engineer  
☐ Modifications to time(s) for rendering services  
☐ Modifications to other terms and conditions of the Agreement

**Description of Modifications:**

The City of Diamondhead requested the design plans be modified from 10 ft width to 11 foot width. In order to not acquire additional ROW, the sidewalks will be reduced in size to accommodate the wider lanes. This change requires the modification to roadway and drainage plans. The additional design fee to make these changes is \$19,500.00.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. The Effective Date of the Amendment is **June 20, 2023**.

Owner  
City of Diamondhead  
 (typed or printed name of organization)  
 By: \_\_\_\_\_  
 (individual's signature)  
 Date: June 20, 2023  
 (date signed)  
 Name: Jon McCraw  
 (typed or printed)  
 Title: City Manager

Engineer  
Covington Civil and Environmental, LLC  
 (typed or printed name of organization)  
 By:   
 (individual's signature)  
 Date: June 14, 2023  
 (date signed)  
 Name: Benjamin Benvenuti  
 (typed or printed)  
 Title: Principal Engineer



5000 Diamondhead Circle • Diamondhead, MS 39525-3260

Phone: 228.222.4626 Fax: 228.222.4390

[www.diamondhead.ms.gov](http://www.diamondhead.ms.gov)

June 14, 2023

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

Dear Councilmembers:

Presented for your approval are the following interfund transfers or loans and/or interfund loan repayments::

**Fund 117 - MDA SMLP Grant – East Aloha Improvements:**

1. Repayment of Interfund Loans from Fund 117 MDA-SMLP Grant to General Fund –  
\$100,000.00 9/20/2020  
\$ 77,107.95 4/4/2023
2. Transfer from General Fund to Fund 117 - **MDA SMLP Grant – East Aloha Improvements**  
\$155,445.60. These funds will be taken from reserve funds.

**Fund 163 – GCRF 22-05 Commercial District Transformation –**

3. Transfer Local Match from General Fund to Fund 163 GCRF 22-05. Funds were budgeted in FY22 and were carried over in fund balance. These funds will be taken from reserve funds.

Thank you for your consideration and approval in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jeannie Klein".

Jeannie Klein  
City Clerk

2023-261

Item No. 13.

City of Diamondhead  
Budget Adjustments  
For the Fiscal Year Ending September 30, 2023

Budget Entry				Adjustment Amount		Form to	Agenda	Council
No. (InCode)	Account	Account Name	Acct Type		Description	Council	Item	Approval
2023-010	190-000-275.00	County Match - Bank Stabilizatin	Rev	2,000,000.00	reallocate funds to new fund 191 for County Match -Bank Stabilization Project			
	191-000-275.00		Rev	(2,000,000.00)				
	191-000-602.00	Engineering Fees	Exp	482,000.00	Budget Expnenses for County Match - Bank Stabilization Project			
	191-000-603.00	Legal Fees	Exp	144,000.00				
	191-000-900.00	Capital Outlay Land	Exp	300,000.00				
	191-000-912.00	Street & Drainage	Exp	1,074,000.00				



## Agreement for Collection Services

THIS AGREEMENT, made and entered into on this \_\_\_\_\_ day of June in the year 2023 between **ADELA, INC** hereinafter called **COLLECTOR**, and **the CITY OF DIAMONDHEAD**, hereafter called **CLIENT**.

WHEREAS, **CLIENT** desires from time to time during the term of this Agreement to submit to **COLLECTOR** for collection certain claims, accounts, or other evidences of indebtedness, and

WHEREAS, **COLLECTOR** desires to provide **CLIENT** with collection services with respect to said claims, accounts, or other evidences of indebtedness.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter set forth, it is mutually agreed by and between the parties hereto that all actions taken by **CLIENT** and **COLLECTOR** pursuant to this Agreement shall be in accordance with the following Terms and Conditions

### Terms and Conditions

- 1.0 All claims referred by **CLIENT** to **COLLECTOR** will be handled on a contingency fee basis with commission rates on all monies collected after claims are placed with **COLLECTOR** as follows:

**COLLECTION FEES (as outlined in the Mississippi Code of 1972):**

Accounts with address inside the State of Mississippi	25%
Accounts who live outside the State of Mississippi	50%
Accounts advancing to Legal status:	50%

No legal action will be taken on an account without written authorization of **CLIENT**. **CLIENT** will advance all court costs. All payments will be credited toward the court cost and remitted to **CLIENT** until paid before any payments are placed on the unpaid balance.

- 1.1 **COLLECTOR** shall remit a monthly statement, including monies collected and due to **CLIENT**. In addition, **COLLECTOR** will furnish collection activity reports to **CLIENT** at the end of each month.
- 1.2 After an account is referred to **COLLECTOR**, the **CLIENT** understands commission will be paid to **COLLECTOR** for any reduction in the balance of an account regardless of the source. **CLIENT** also agrees to report payments or balance reductions credited to the unpaid balance received in their office at least once a week. If an unreported payment is found through debtor contact, an additional fee of 15% will be added to the commission fee on that account. **CLIENT** agrees to periodically review payment reporting procedures with office personnel.
- 1.3 **COLLECTOR** agrees that all activities of service for **CLIENT** shall be carried out in compliance with all applicable federal, state, and local laws. **COLLECTOR** further agrees that all service activities shall be conducted peaceably and to only assign employees who are trained to the extent necessary to insure that all collection activities undertaken are, and will be, in full compliance with all local, state, and federal law.
- 1.4 **CLIENT** hereby warrants that all claims forwarded to **COLLECTOR** will be **valid and legally enforceable debts**, and **CLIENT** has complied with all applicable federal, state, and local laws with

respect thereto prior to the referral of said claims to *COLLECTOR*. Further, *CLIENT* agrees to provide, when requested to do so by *COLLECTOR*, a written verification of a bad debt claim. Client warrants that none of the claims submitted by *CLIENT* to *COLLECTOR* are violative of the applicable statute of limitations.

- 1.5 Claims requiring legal action will be handled by *COLLECTOR* only with the prior authorization of *CLIENT*. *CLIENT* agrees to provide proof of claim of the debt and court cost. The first payments received on the debt shall be credited toward the *CLIENT*'S court costs to such time as the *CLIENT*'S court cost fees are reimbursed.
- 1.6 Compromise settlements will not be made on accounts without prior approval of *CLIENT*.
- 1.7 *CLIENT* agrees to discontinue the mailing of monthly statements from their office to prevent debtor confusion. *CLIENT* further agrees to notify *COLLECTOR* immediately upon receipt of any and all correspondence pertaining to a referred account including but not limited to **bankruptcy notices, attorney letters, dispute letters, insurance rejections, or similar matters of importance.**
- 1.8 An account cannot be recalled if an account is in legal status which includes a filing for judgment or garnishment.
- 1.9 *COLLECTOR* agrees to indemnify, defend and hold *CLIENT* harmless from any and all losses, damages, claims and/or causes of action for any kind or character arising out of or relating to any service or collection activity performed by or at the direction of *COLLECTOR*. *CLIENT* agrees to indemnify, defend and hold *COLLECTOR* harmless from any and all losses, damages, claims and/or causes of action as a result of any action or lack of action taken by the *CLIENT* pertaining to any and all claims referred to *COLLECTOR* for the purpose of recovering delinquent debts.
- 1.10 *COLLECTOR* agrees not to disclose any information on accounts referred to collection by the *CLIENT* to any third party and agrees to require all of its employees not to disclose such information, with the exception of submitting account information to a credit reporting agency in order for the past due debt to be placed on the consumer's credit file. In addition, *COLLECTOR* will not disclose information about the *CLIENT* to a third party without express permission of the *CLIENT*.
- 1.11 *COLLECTOR* agrees to provide insurance coverage for its collection activities contemplated by this Agreement. This provision shall survive any termination of this Agreement.
- 1.12 *COLLECTOR* agrees to obtain all necessary licenses or other approval from any and all agencies, boards, officials, departments, or other government or regulatory bodies in any jurisdiction, which *COLLECTOR* engages in collection activities.
- 1.13 This contract will be in force for a period of three (3) years from the date the contract was executed and shall thereafter be automatically renewed for successive three (3) year periods upon the anniversary date of the signing. *COLLECTOR* acknowledges that the contract must be ratified by any newly seated Council. In the event the new council does not ratify and wishes to terminate the contract, a written notification of intention to not renew the contract must be received by



**ADELA AGENCY**

Collection Contract

Page 3

COLLECTOR at least 60 days prior to the renewal date. CLIENT understands that COLLECTOR will retain any accounts which have payment arrangement in place at the time of termination of contract. All accounts withdrawn may be subject to a 4% fee for account processing and work performed in the attempt to collect the account.

- 1.14 It is understood and agreed that *COLLECTOR'S* services are made available and provided as an "independent contractor" only, and that *CLIENT* does not engage or appoint *COLLECTOR* as its employee in connection with such services.
- 1.15 By signing this agreement, *CLIENT* also consents to *COLLECTOR* communicating with *CLIENT* by fax, email, or any other form of delivery of written communications. *COLLECTOR* hereby consents to the same from *CLIENT*.
- 1.16 This Agreement shall be governed by the laws of the State of Mississippi and the forum for any contest or enforcement hereof shall be Forrest County, Mississippi.
- 1.17 Should the *CLIENT* elect to terminate this agreement, then the *COLLECTOR* shall be entitled to recover any and all funds expended by it for the postage, fees, or any other expense incurred by *COLLECTOR* in the collection of any and all claims, accounts, or other evidences of indebtedness.

**THIS AGREEMENT**, Consists of 3 pages including the **TERMS AND CONDITIONS**, and constitutes the entire Agreement between the parties hereto and cannot be amended, modified or canceled in any respect except by an amendment in writing signed by both parties.

**CITY OF DIAMONDHEAD**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Address: 5000 Diamondhead Circle  
Diamondhead, MS 39525

Telephone: **228-222-5506**

Contact Person: Jeannie Klein, Municipal Clerk

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Phys Add: same as above

**ADELA, INC**

By: \_\_\_\_\_

Print: Karan R. McGee

Title: President

P.O. Box 1745, Hattiesburg, MS 39403

**601-583-5445 Lacy Young, operations****601-583-5494. Fax****601-606-7940 Karan McGee**

Emails:

Billing, listing, or account questions:

[operations@adelainc.com](mailto:operations@adelainc.com)Other questions: [karan@adelainc.com](mailto:karan@adelainc.com)

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY  
MISSISSIPPI MUNICIPALITY AND COUNTY WATER INFRASTRUCTURE GRANT**

**STATE OF MISSISSIPPI  
COUNTY OF HINDS**

**MDEQ AGREEMENT NO. 605-2-SW-5.6**

**SUBAWARD AGREEMENT**

This document is a Subaward Agreement (this "Agreement") between the Mississippi Department of Environmental Quality ("MDEQ"), a Pass-through entity as defined in 2 C.F.R. § 200.1, and City of Diamondhead, UEI Number: K9M1T71V8JM9 ("SUBRECIPIENT", and together with MDEQ, the "Parties", and each, a "Party") to provide grant funds for the Work conducted under the Mississippi Municipality and County Water Infrastructure ("MCWI") Grant Program (the "Program") as specified in Article 4.

**1. SOURCE OF FUNDS**

The grant funds provided by this Agreement are made available pursuant to the Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131), provided through funds awarded to the State of Mississippi pursuant to the American Rescue Plan Act of 2021 ("ARPA"), Public Law 117-2 (March 11, 2021), provided through the U.S. Department of Treasury pursuant to Federal Award # SLFRP0003 and CFDA No. 21.027 (Coronavirus State and Local Fiscal Recovery Funds) awarded on May 10, 2021, and subsequently to MDEQ through Mississippi Senate Bill 3056, 2022 Regular Session (April 26, 2022) and Mississippi House Bill 1716, 2023 Regular Session (March 22, 2023).

**2. PROJECT**

Under this Agreement, MDEQ agrees to disburse funds to SUBRECIPIENT in accordance with the terms herein to reimburse the costs associated with SUBRECIPIENT's implementation of the project entitled "Kaleki Way Stormwater Improvements" (the "Project").

**3. PURPOSE**

The purpose of this Project is to make a necessary investment in an upgrade to SUBRECIPIENT's infrastructure. The Project is not for Research and Development.

**4. SCOPE OF WORK**

SUBRECIPIENT shall perform the tasks as described and identified in Attachment A, Scope of Work (the "Work").

**5. TERMS AND CONDITIONS**

SUBRECIPIENT is subject to U.S. Treasury's regulations governing ARPA, and all applicable terms and conditions in 2 C.F.R. Part 200 of the Office of Management and Budget ("OMB") Uniform Guidance for Grants and Cooperative Agreements, as amended, including



Appendix II to Part 200, and all other OMB circulars, executive orders or other federal laws or regulations applicable to the services provided under this Agreement. All of these terms and conditions of this Agreement apply to SUBRECIPIENT and, as applicable, its Contractors/Contracted Parties.

#### 6. PERIOD OF PERFORMANCE

The Period of Performance shall commence upon the execution of this Agreement and shall end on **September 30, 2026**. Costs incurred on March 3, 2021, or thereafter, but prior to the commencement of the Period of Performance may be reimbursed provided MDEQ determines such costs are allowable and eligible. SUBRECIPIENT agrees to complete all tasks included in the Scope of Work within this Period of Performance, unless otherwise specified in writing by MDEQ. If, at any time during the Period of Performance of this Agreement, SUBRECIPIENT determines, based on the Work performed to date, that the Work cannot be completed within the Period of Performance, SUBRECIPIENT shall so notify MDEQ immediately in writing.

Failure to adhere to the requirements placed on MCWI funds can result in termination of this Agreement and may result in a demand for repayment by MDEQ. Moreover, if MDEQ is required to return any funds as a result of misspending on the part of SUBRECIPIENT, MDEQ reserves the right to seek and receive repayment of the amount of funds in question.

#### 7. CONSIDERATION AND PAYMENT

A. *Project Cost.* The total Project cost shall not exceed **\$647,609.50**, with said amount broken down as follows:

- i. MCWI Grant Funds shall not exceed **\$313,730.82**;
- ii. The Local Fiscal Recovery Funds ("LFRF") received by SUBRECIPIENT from the U.S. Treasury or the Mississippi Department of Finance and Administration used as matching funds in this Agreement shall not exceed **\$313,730.82**;
- iii. Any LFRF transferred to SUBRECIPIENT from a county or municipality ("Transferred LFRF") shall not exceed **\$0.00**;
- iv. Any other funds that SUBRECIPIENT obligates(ed) to the project that are not eligible for MCWI match ("Other Funds") shall not exceed **\$20,147.86**.

B. Professional fees that will be reimbursed with MCWI Grant Funds shall not exceed **\$25,904.38**. This amount is included in, and is not in addition to, the maximum MCWI Grant Funds specified in Article 7.A.i, above and Article 7.C., below.

SUBRECIPIENT understands and acknowledges that the amount of professional fees, as defined in the MCWI Regulations, Rule 1.1 E. (18), that may be matched with MCWI Grant Funds is limited to no more than 4% of the total amount of costs actually incurred on the Project, which in no case may be more than the total Project cost set forth in Article 7.A., above.

C. *Consideration.* As consideration for the performance of the tasks included in this Agreement, MDEQ agrees to reimburse SUBRECIPIENT an amount not to exceed **Three Hundred Thirteen Thousand Seven Hundred Thirty Dollars and Eighty-Two Cents (\$313,730.82)** (the “Maximum Amount”).

MDEQ is under no obligation to provide funds to SUBRECIPIENT if SUBRECIPIENT has not met, or does not continue to meet, minimum federal requirements to receive funds, such as but not limited to, adhering to applicable procurement requirements found in 2 C.F.R. Part 200 *et al.* Moreover, MDEQ bears no responsibility relative to SUBRECIPIENT’s expenditure of its own funds. To that end, in the process of review of documentation for reimbursement, as well as compliance monitoring activities associated with the Program, MDEQ is not responsible or liable for any expenditure made by SUBRECIPIENT with its funds. As such, SUBRECIPIENT is solely responsible for compliance with federal and state requirements associated with its LFRF, its LFRF Transferred Funds, and any other funds it uses towards its Project that are not a part of the MCWI Grant Funds. SUBRECIPIENT must substantiate all expenditures in a compliant manner. MDEQ is under no obligation to reimburse costs incurred that are not demonstrably compliant with federal and state law.

D. *Payment.* Subject to available funding, as set forth in the terms and conditions of this Agreement, MDEQ shall pay all properly invoiced amounts due to SUBRECIPIENT within forty-five (45) days after MDEQ’s receipt of such invoice, except for any amounts disputed by MDEQ in good faith. Legislative approval may be required where MDEQ receives any claim of payment from SUBRECIPIENT that includes Work performed outside a one (1) year period from receipt of such invoice.

i. *Request for Payment.* SUBRECIPIENT shall request payment of funds hereunder for Project costs on a reimbursement basis (such requests, “Reimbursement Requests”), unless otherwise directed by MDEQ. SUBRECIPIENT shall submit Reimbursement Requests and supporting documentation of costs incurred as required by MDEQ to the MCWI Reimbursement Portal, located at <https://www.mswaterinfrastructure.com>. All Reimbursement Requests for time periods ending June 30 of any year, during the Period of Performance under this Agreement, shall be submitted no later than July 31 of that same year. Final invoice(s) shall be submitted to MDEQ no later than September 30, 2026. The Reimbursement Request shall include, at a minimum, breakdowns of personnel, position, dates worked, tasks performed, and totals for contract costs, materials, supplies and equipment, included in the Reimbursement Request. SUBRECIPIENT shall make Reimbursement Requests in accordance with the following procedures and subject to the following terms and conditions:

1. SUBRECIPIENT may make Reimbursement Requests no more frequently than once monthly during the Period of Performance of this Agreement.



2. SUBRECIPIENT shall request payment under this Agreement only for the costs necessary to complete the Scope of Work specifically stated and required under this Agreement.

3. SUBRECIPIENT shall not request payment under this Agreement for other services or other work the SUBRECIPIENT or its contractors may provide under any other Subaward or Contract not related to this Project.

4. SUBRECIPIENT shall provide on each Reimbursement Request the amount of its LFRF, Transferred LFRF and Other Funds expended. SUBRECIPIENT shall also provide the amount requested for professional fees. MDEQ will then determine the amount of MCWI Grant Funds that each Reimbursement Request qualifies for within the Program regulations and procedures.

5. SUBRECIPIENT understands that no payment, including final payment, shall be interpreted as acceptance of defective and incomplete Work, and SUBRECIPIENT shall remain responsible for performance in strict compliance with this Agreement. If MDEQ rejects, condemns or fails to approve any part of the Scope of Work, it may issue a Notice to Cure or terminate this Agreement.

6. MDEQ reserves the right to refuse to pay all or any part of the funds requested in a Reimbursement Request for any of the following reasons: 1) at MDEQ's discretion, the costs SUBRECIPIENT is seeking reimbursement for are not reasonable or necessary for the completion of the Work in this Agreement, 2) at MDEQ's discretion, the costs are ineligible for reimbursement under this Project, 3) at the time the request is submitted SUBRECIPIENT has failed to comply with any term or condition of this Agreement, 4) at the time the request is submitted the SUBRECIPIENT has otherwise failed to perform the Work to date in accordance with the Scope of Work, or 5) at the time the request is submitted the SUBRECIPIENT has otherwise failed to comply with applicable state, federal, or local laws and regulations.

ii. *Indirect Cost Rate.* Reimbursement of indirect costs and/or overhead is not allowed under this Agreement.

E. *Limitations on Expenditures.* MDEQ shall reimburse SUBRECIPIENT only for documented expenditures incurred on or after March 3, 2021: (i) reasonable and necessary to carry out the Scope of Work described in Attachment A; (ii) documented by contracts or other evidence of liability and (iii) incurred in accordance with all applicable requirements for the expenditure of funds payable under this Agreement.

F. *Improper Payments.* Any item of expenditure by SUBRECIPIENT under the terms of this Agreement which is found by auditors, investigators, other authorized

representatives of MDEQ, the U.S. Treasury, the Mississippi State Auditor or other federal or state instrumentality to be improper, unallowable, in violation of federal or state law, or the terms of this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of SUBRECIPIENT shall become SUBRECIPIENT's liability, and shall be paid solely by SUBRECIPIENT, immediately upon notification of such, from funds other than those provided by MDEQ under this Agreement. This provision shall survive the expiration or termination of this Agreement.

Any funds that are paid by MDEQ to SUBRECIPIENT that are not necessary for the completion of the Work in this Agreement and/or that are deemed ineligible must be returned to MDEQ immediately upon receiving MDEQ's written notification for return of funds.

G. *Clawback.* If funds are expended improperly or if an expense submitted for reimbursement is disallowed or deemed ineligible under federal, state or local laws and regulations, then payments to SUBRECIPIENT may be subject to clawback by MDEQ, the State of Mississippi or the U.S. Treasury.

#### 8. **AMENDMENTS OR MODIFICATION**

This Agreement may only be amended, modified, or supplemented by written agreement signed by the Parties hereto.

#### 9. **PROGRESS REPORTS**

SUBRECIPIENT shall provide required progress reports during the Period of Performance of this Agreement in a format prescribed by MDEQ. These reports shall be submitted in accordance with the following schedule, which may be amended from time to time:

<u>REPORTING PERIOD</u>	<u>DEADLINE</u>
October – December	January 15
January – March	April 15
April – June	July 15
July – September	October 15

This provision shall survive the expiration or termination of this Agreement with respect to any reports which SUBRECIPIENT is required to submit to MDEQ following the expiration or termination of this Agreement.

#### 10. **FAILURE TO TIMELY PERFORM**

SUBRECIPIENT shall take all reasonable measures to ensure MCWI Grant Funds and LFRF used for MCWI matching funds are obligated by 11:59 p.m. on August 30, 2024. SUBRECIPIENT acknowledges and agrees that its failure to obligate MCWI Grant Funds and



LFRF used for MCWI matching funds by 11:59 p.m. on August 30, 2024, may result in MDEQ modifying the MCWI Grant Funds awarded or terminating this Agreement.

If SUBRECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof authorized by MDEQ or if SUBRECIPIENT otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUBRECIPIENT in writing of the delay or nonperformance. If such delay or nonperformance is not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may terminate SUBRECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to perform properly.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUBRECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUBRECIPIENT in which the State has an interest.

#### 11. **FINAL PAYMENT AND REPORT**

When SUBRECIPIENT has performed all the Work, SUBRECIPIENT shall transmit to MDEQ a comprehensive report on the Work in a format prescribed by MDEQ (the "Final Report"). The Final Report shall be provided by SUBRECIPIENT to MDEQ within forty-five (45) days of Project completion in a format prescribed by MDEQ. Upon acceptance of Final Report, MDEQ will process final Reimbursement Request.

Upon satisfactory completion of the Work performed under this Agreement, as a condition before final payment under this Agreement or as a termination settlement under this Agreement, SUBRECIPIENT shall certify to MDEQ, on a form provided by MDEQ, that the final payment amount is the remaining amount that SUBRECIPIENT is owed under this Agreement and that no additional payment for its Work under this Project will be submitted for reimbursement. Unless otherwise provided in the Agreement, by state law or otherwise expressly agreed to by the Parties in this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of MDEQ's claims against SUBRECIPIENT or its sureties under this Agreement.

In consideration of the execution of this Agreement by MDEQ, SUBRECIPIENT agrees that acceptance of final payment from MDEQ will constitute an agreement by SUBRECIPIENT to release and forever discharge MDEQ, its agents, employees, officers, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which SUBRECIPIENT has at the time of acceptance of final payment or may thereafter have, arising out of, in connection with or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this Agreement.

#### 12. **FINANCIAL MANAGEMENT AND COMPLIANCE**

MDEQ requires that SUBRECIPIENT have in place, prior to the receipt of funds, a financial management system that will be able to isolate and trace every dollar funded under this Agreement from receipt to expenditure and have on file appropriate support documentation for each transaction. Examples of documentation include but are not limited to copies of checks paid

to vendors, vendor invoices, bills of lading, purchase vouchers, payrolls, bank statements and reconciliations, and real property and easement appraisals. Prior to the submittal of any such documentation to MDEQ, SUBRECIPIENT shall redact, in accordance with the definition of "Protected Personally Identifiable Information" ("Protected PII") as defined in 2 C.F.R. § 200.1, all information reflecting an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII as defined in 2 C.F.R. § 200.1 that is required by law to be disclosed. SUBRECIPIENT and any Contracted Parties (as such term is defined in Article 13 of this Agreement) are limited to the travel rates of the State of Mississippi, including dining and hotels, in place at the time of the expenditure for which reimbursement is sought; and SUBRECIPIENT shall audit any such invoice for same, clearly indicating the actual expense and the adjustment, if any.

SUBRECIPIENT certifies that all information provided to MDEQ or its representatives as part of the initial risk assessment for this Work is complete and accurate. SUBRECIPIENT agrees to submit to and cooperate with MDEQ in any additional risk assessment evaluation and periodic audit procedures to ensure adequate financial management of all funds. Further, SUBRECIPIENT shall continue to implement any recommendations and/or corrective action plan set forth in the report transmitted to SUBRECIPIENT based on the findings of the systems and processes for financial management, a copy of which is attached hereto as Attachment B and incorporated herein in its entirety.

### 13. **CONTRACTS**

SUBRECIPIENT shall be responsible for accountability of funds, compliance with Project specifications, and Project management by its contractors. MDEQ shall not bear responsibility for any liability caused or incurred by any contractor in performing Work. MDEQ shall not be deemed by virtue of this Agreement to have any contractual obligation to, or relationship with, any of SUBRECIPIENT's contractors, and the Parties agree and acknowledge that, as between MDEQ and SUBRECIPIENT, all Work shall be deemed to be the responsibility of, and performed by, SUBRECIPIENT. No contractor or other recipient of funds from MDEQ under this Agreement shall be deemed to be an agent, representative, employee or servant of MDEQ in connection with this Agreement. The parties with whom contracts or subaward agreements are entered into by the SUBRECIPIENT shall be referred to herein as "Contractor", "Contracted Party", or "Contracted Parties". In addition to ensuring that its Contracted Parties follow the applicable terms in this Agreement, SUBRECIPIENT shall require all terms and conditions set forth in Attachments A and C attached hereto to be included in all agreements between the SUBRECIPIENT and Contracted Parties, and in all agreements between Contracted Parties and Contracted Parties' contractors/sub-contractors.

### 14. **APPLICABLE LAW**

The Agreement shall be governed by and construed in accordance with the laws and regulations of the State of Mississippi and applicable federal law excluding, its conflict of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State.



SUBRECIPIENT shall comply with applicable federal, state, and local laws and regulations, including, but not limited to, the following:

A. *Authorizing Statutes.* Section 603 of the Social Security Act (42 U.S.C. § 803), as added by section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) and the Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131).

B. *Implementing Regulations.* Subpart A of 31 C.F.R. Part 35 (Coronavirus State and Local Fiscal Recovery Funds), as adopted in the Coronavirus State and Local Fiscal Recovery Funds interim final rule (86 Fed. Reg. 26786, applicable May 17, 2021 through March 31, 2022) and final rule (87 Fed. Reg. 4338, applicable January 27, 2022 through the end of the ARP/CSLFRF award term), and other subsequent regulations implementing Section 603 of the Social Security Act (42 U.S.C. § 803), as well as MDEQ regulations, entitled “Mississippi Commission on Environmental Quality Regulations for the Mississippi Municipality and County Water Infrastructure Grant Program.”

C. *Guidance Documents.* Applicable guidance documents issued from time-to-time by the US Department of Treasury and MDEQ, including the currently applicable version of the *Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds*.<sup>1</sup>

D. *Licenses, Certifications, Permits, Accreditation.* SUBRECIPIENT shall obtain and keep current any license, certification, permit, or accreditation required by federal, state, or local law and shall submit to MDEQ proof of any licensure, certification, permit or accreditation upon request.

## 15. **AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of MDEQ to proceed under this Agreement is conditioned upon the availability of the funds from state, federal, and/or other funding sources. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or 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 MDEQ, MDEQ shall have the right upon ten (10) working days written notice to the SUBRECIPIENT, to terminate this Agreement without damage, penalty, cost or expenses to MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

## 16. **REPRESENTATION REGARDING CONTINGENT FEES**

SUBRECIPIENT represents that it has not retained a person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

<sup>1</sup> <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.



## 17. REPRESENTATION REGARDING GRATUITIES

SUBRECIPIENT represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* and Section 9.105 (Gratuities) of the Mississippi Procurement Manual.

## 18. UNIFORM ADMINISTRATIVE REQUIREMENTS

SUBRECIPIENT shall comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 2 C.F.R. Part 200 ("UG"), as adopted by the Department of Treasury at 2 C.F.R. Part 1000 and as set forth in the Assistance Listing for ARP/CSLFRF (21.027). These requirements dictate how SUBRECIPIENT must administer the Subaward and how MDEQ must oversee SUBRECIPIENT. As a condition of receipt of the grant funds authorized in this Agreement, SUBRECIPIENT agrees to watch the video entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview" found at <https://www.mswaterinfrastructure.com>.

The applicable UG provisions are as follows:

- Subpart A, Acronyms and Definitions;
- Subpart B, General Provisions;
- Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards (except 2 C.F.R. §§ 200.204, .205, .210, and .213);
- Subpart D, Post Federal Award Requirements (except 2 C.F.R. §§ 200.305(b)(8) and (9), .308, .309, and .320(c)(4));
- Subpart E, Cost Principles;
- Subpart F, Audit Requirements;
- 2 C.F.R. Part 25 (Universal Identifier and System for Award Management);
- 2 C.F.R. Part 170 (Reporting Subaward and Executive Compensation Information); and
- 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)).

SUBRECIPIENT shall document compliance with UG requirements, including adoption and implementation of all required policies and procedures, within thirty (30) days of the execution of this Agreement and during all subsequent reviews during the term of the Agreement. It is SUBRECIPIENT's responsibility to comply with all UG requirements. Failure to do so may result in termination of the Agreement by MDEQ.

All real property acquired or improved, and equipment or supplies purchased in whole or in part with MCWI Grant Funds and/or LFRF, must be used, insured, managed, and disposed of in accordance with 2 C.F.R. § 200.311 through 2 C.F.R. § 200.316.

## 19. SUBAWARDS

If SUBRECIPIENT is authorized by MDEQ to make a Subaward, SUBRECIPIENT must include and incorporate the terms and conditions of this Agreement and any attachments, in all lower tier Subawards. Further, SUBRECIPIENT, who makes a Subaward, must follow and carry out all the responsibilities of a Pass-through entity described at 2 C.F.R. Part 200.

## 20. COMPLIANCE WITH LAWS

SUBRECIPIENT understands that MDEQ is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and SUBRECIPIENT agrees during the Period of Performance of the Agreement that SUBRECIPIENT will strictly adhere to this policy in its employment practices and work performance under this Agreement. SUBRECIPIENT shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified.

SUBRECIPIENT along with any sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d *et seq.*, as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement. Further, SUBRECIPIENT agrees to comply with the provisions of Attachment D to this Agreement.

Nothing contained in this Agreement may be deemed or construed in any way to stop, limit, or impair MDEQ from exercising or performing any regulatory, legislative, governmental, or other powers or functions.

SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under ARPA, including the information provided by the State and Local Fiscal Recovery Fund Final Rule.<sup>2</sup>

SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under the Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131).<sup>3</sup>

<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>

<sup>3</sup> <http://billstatus.ls.state.ms.us/documents/2023/pdf/SB/2400-2499/SB2444SG.pdf>



SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under the Regulations promulgated by MDEQ.<sup>4</sup>

21. **STOP WORK ORDER**

A. *Order to Stop Work:* MDEQ may, by written order to SUBRECIPIENT at any time and without notice to any surety, require SUBRECIPIENT to stop all or any part of the Work called for by this Agreement. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to SUBRECIPIENT, 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, SUBRECIPIENT shall forthwith comply with its terms and take all reasonable 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, MDEQ shall either:

- i. cancel the stop work order; or
- ii. terminate the Work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this Agreement.

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, SUBRECIPIENT shall have the right to resume Work. An appropriate adjustment may be made in the Period of Performance or Maximum Amount, or both, and the Agreement shall be modified in writing accordingly if:

- i. The stop work order results in an increase in the time required for, or in SUBRECIPIENT's cost properly allocable to, the performance of any part of this Agreement; and
- ii. SUBRECIPIENT provides a written claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that MDEQ decides that the facts justify such action and any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

C. *Termination of Stopped Work:* If a stop work order is not canceled and the Work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order may be allowed by adjustment or otherwise.

22. **E-PAYMENT**

SUBRECIPIENT agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. MDEQ agrees to make payment in

<sup>4</sup> <https://mswaterinfrastructure.com/wp-content/uploads/2022/07/MCWI-Grant-Program-Regulations-revised-12-16-22.pdf>



accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305.

### 23. INTERVENTIONS

If MDEQ determines that SUBRECIPIENT is not in compliance with this Agreement, MDEQ may initiate an intervention, in accordance with 2 C.F.R. § 200.208 and 2 C.F.R. § 200.339. The degree of SUBRECIPIENT’s performance or compliance deficiency will determine the degree of intervention. All possible interventions are listed below and will depend on the degree of deficiency in SUBRECIPIENT’s performance or compliance deficiency.

If MDEQ determines that an intervention is warranted, it shall provide written notice to SUBRECIPIENT of the intervention within thirty (30) days of the completion of a report review, desk review, onsite review, audit review, or procedures engagement review, or as soon as possible after MDEQ otherwise learns of a compliance or performance deficiency related to the execution of this Agreement. The written notice shall notify SUBRECIPIENT of the following related to the intervention:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the action needed to remove the additional requirement, if applicable;
- (4) The time allowed for completing the actions if applicable; and
- (5) The method for requesting reconsideration of the additional requirements imposed.

MDEQ may impose, but is not limited to, the following interventions on SUBRECIPIENT, based on the level of the compliance or performance deficiency that MDEQ determines:

**Level 1 Interventions.** These interventions may be required for minor compliance or performance issues:

- (1) SUBRECIPIENT addresses specific internal control, documentation, financial management, compliance, or performance issues within a specified time period; and/or
- (2) More frequent or more thorough reporting by the SUBRECIPIENT; and/or
- (3) More frequent monitoring by MDEQ; and/or
- (4) Required SUBRECIPIENT technical assistance or training.

**Level 2 Interventions.** These interventions may be required for more serious compliance or performance issues:

- (1) Restrictions on funding payment requests by SUBRECIPIENT; and/or
- (2) Disallowing payments to SUBRECIPIENT; and/or
- (3) Requiring repayment for disallowed cost items; and/or
- (4) Imposing probationary status on SUBRECIPIENT.

**Level 3 Interventions.** These interventions may be required for significant and/or persistent compliance or performance issues:

- (1) Temporary or indefinite funding suspension to SUBRECIPIENT; and/or
- (2) Nonrenewal of funding to SUBRECIPIENT in subsequent year; and/or
- (3) Terminate funding to SUBRECIPIENT in the current year; and/or
- (4) Initiate legal action against SUBRECIPIENT.

Interventions will remain in place until the underlying performance or compliance deficiency is addressed to the sole satisfaction of MDEQ.

#### 24. **E-VERIFICATION**

If applicable, SUBRECIPIENT represents and certifies that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1, *et seq.* The term “employee” as used herein means any person that is hired to perform work within the State. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. SUBRECIPIENT agrees to maintain records of such compliance. Upon request of the State of Mississippi and after approval of the Social Security Administration or Department of Homeland Security, when required, SUBRECIPIENT agrees to provide a copy of each such verification. SUBRECIPIENT further represents and certifies that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws.

#### 25. **TRANSPARENCY**

This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983” and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this Agreement is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Agreement may be posted to the Department of Finance and Administration’s independent agency Agreement website for public access at <https://www.transparency.mississippi.gov>. Information identified by SUBRECIPIENT as trade secrets or other proprietary information, including confidential vendor information, or any other information which is required to be confidential by state or federal law or outside the applicable freedom of information statutes will be redacted.

#### 26. **PAYMODE**

Payments by state agencies using the statewide accounting system shall be made and remittance information provided electronically as directed by MDEQ. These payments shall be deposited into the bank account of SUBRECIPIENT’s choice. MDEQ may, at its sole discretion, require SUBRECIPIENT to submit invoices and supporting documentation electronically at any time during the Period of Performance of this Agreement. SUBRECIPIENT understands and



agrees that MDEQ is exempt from the payment of taxes. All payments shall be in United States currency.

## 27. TERMINATION

The Agreement may be terminated as follows:

### A. *Termination For Convenience.*

The MDEQ may, when the interests of the State so require, terminate this Agreement in whole or in part, for the convenience of the State. MDEQ shall give written notice of the termination to SUBRECIPIENT specifying the part of the Agreement terminated and when termination becomes effective.

### B. *Termination For Default.*

If SUBRECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof or otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUBRECIPIENT in writing of the delay or nonperformance, and if not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may terminate SUBRECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUBRECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUBRECIPIENT in which the State has an interest.

### C. *Termination Upon Bankruptcy.*

This Agreement may be terminated in whole or in part by MDEQ upon written notice to SUBRECIPIENT, if SUBRECIPIENT should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by SUBRECIPIENT of an assignment for the benefit of its creditors. In the event of such termination, SUBRECIPIENT shall be entitled to recover just and equitable compensation for satisfactory Work performed under this Agreement, but in no case shall said compensation exceed the total Maximum Amount.

## 28. DISPUTES

Before pleading to any judicial system at any level, SUBRECIPIENT must exhaust all administrative remedies. A written complaint must first be sent to the Executive Director of MDEQ. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to SUBRECIPIENT within fourteen (14) days after receipt of information



requested by MDEQ or the Executive Director. If the decision of the Executive Director does not resolve the matter, successive administrative remedies may, at SUBRECIPIENT's option, include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Miss. Code Ann. §§ 49-17-35 and -41. In the alternative, at SUBRECIPIENT's option, the decision of the Executive Director may be deemed the final agency action on the complaint. Appeals from the decision of the Executive Director or the Commission shall follow procedures outlined in Miss. Code Ann. § 49-17-41.

29. **ANTI-ASSIGNMENT/CONTRACTING**

SUBRECIPIENT shall not assign, contract, or otherwise transfer this Agreement, in whole or in part without the prior written consent of MDEQ, which MDEQ may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MDEQ of any contract shall be deemed in any way to provide for the incurrence of any obligation of MDEQ in excess of the Maximum MCWI Grant Fund amount set forth in this Agreement, nor create any contractual relationship between MDEQ and any Contracted Parties. Contracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that MDEQ may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the Parties.

30. **AUTHORITY TO PARTICIPATE IN THIS AGREEMENT**

SUBRECIPIENT certifies and acknowledges it is a Mississippi county, municipality or public utility, as defined in MCWI regulation, Rule 1.1. E. (17), and that it has LFRF to use as match funding for this grant. SUBRECIPIENT further certifies and acknowledges that its entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

31. **DEBARMENT AND SUSPENSION**

SUBRECIPIENT certifies to the best of its knowledge and belief, that it, and its Contracted Parties:

A. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. have not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it 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 Agreement or Contract under a public transaction;

C. have not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for a 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;

D. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in Article 31. B. and Article 31. C., above; and

E. have not, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

### 32. **FAILURE TO ENFORCE**

Failure by MDEQ, at any time, to enforce the provisions of this Agreement shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of this Agreement or any part thereof or the right of MDEQ to enforce any provision at any time in accordance with its terms.

### 33. **INDEMNIFICATION**

SUBRECIPIENT agrees to maintain responsibility for the Project and agrees to provide proper operation and maintenance of all facilities for the life of the Project. SUBRECIPIENT's tort liability, if it is an entity of the State of Mississippi, is determined and controlled in accordance with Miss. Code Ann. §§ 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering this liability or of eliminating any defense available to the State under statute.

To the extent allowed by state law, SUBRECIPIENT agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and MDEQ's contractors from and against any and all claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of SUBRECIPIENT, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

### 34. **SUBRECIPIENT STATUS**

SUBRECIPIENT shall, during the entire Period of Performance of this Agreement, be construed to be an independent SUBRECIPIENT. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship or a joint venture relationship.

SUBRECIPIENT represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who are qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of MDEQ.

Any person assigned by SUBRECIPIENT to perform the services hereunder shall be an employee or independent contractor of SUBRECIPIENT, who shall have the sole right to hire and discharge its employees and/or independent contractors under this Agreement.



SUBRECIPIENT shall pay, when due, all salaries and wages of its employees and accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. This provision is solely for the benefit of MDEQ, and nothing herein shall be construed to create or impose any contractual or agency relationship between MDEQ and SUBRECIPIENT'S contractors, subcontractors, employees or agents.

35. **INSURANCE**

SUBRECIPIENT and its Contracted Parties agree to and shall maintain insurance that is required by applicable state, federal, and local laws and regulations.

36. **ENTIRE AGREEMENT**

This Agreement, including all attachments, represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This Agreement may be altered, amended, or modified only by a written document executed by MDEQ and SUBRECIPIENT. SUBRECIPIENT acknowledges that it has thoroughly read this Agreement and all its attachments and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein.

37. **ORAL STATEMENTS**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. All modifications to the Agreement must be made in writing by the MDEQ and agreed to by SUBRECIPIENT.

38. **RECORD RETENTION AND ACCESS TO RECORDS**

Provided SUBRECIPIENT is given reasonable advance written notice and such inspection is made during normal business hours of SUBRECIPIENT, the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of SUBRECIPIENT's books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the SUBRECIPIENT's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by SUBRECIPIENT for a minimum of ten (10) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

SUBRECIPIENT is not required to retain the above-mentioned records for the ten-year period prescribed in this Article and Article 39 only if all of the following conditions are satisfied:



A. SUBRECIPIENT has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;

B. No audit, litigation or other action arising out of or related in any way to this Project is commenced before SUBRECIPIENT provides the records and corresponding certification to MDEQ, in which case, SUBRECIPIENT shall retain the records until all issues arising out of the action are finally resolved; and

C. SUBRECIPIENT provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

39. **RIGHT TO AUDIT**

SUBRECIPIENT shall maintain all financial records, including electronic financial records, as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. SUBRECIPIENT shall retain these records for a period of ten (10) years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten (10) year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General. If any litigation, claim, investigation, or audit relating to this Agreement or an activity funded under the Agreement is started before the expiration of the ten (10) year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

40. **RIGHT TO INSPECT WORK; ACCESS**

MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Notwithstanding any review or inspection by MDEQ and their representatives, invitees, and consultants, SUBRECIPIENT shall not be relieved of its responsibility for performance of the Work or the submission of reports as expressly set forth in this Agreement solely by virtue of such inspection or review of the Work. SUBRECIPIENT shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to SUBRECIPIENT's performance of the Work.

41. **SEVERABILITY**

If any part of this Agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the Parties shall amend the Agreement as necessary to reflect the original intent of the Parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

42. **THIRD PARTY ACTION NOTIFICATION**

SUBRECIPIENT shall give the MDEQ prompt notice in writing of any action or suit filed, and prompt notice of any claim made against SUBRECIPIENT by any entity that may result in litigation related in any way to this Agreement.

43. **CERTIFICATIONS**

SUBRECIPIENT's execution of this Agreement shall be deemed as acknowledgement, guarantee and certification by SUBRECIPIENT of the following:

A. SUBRECIPIENT has sufficient LFRF in its possession that it will use to match MCWI Grant Funds.

B. SUBRECIPIENT will follow and abide by all ARPA guidelines, guidance, rules, regulations, and other criteria, as may be amended from time to time, by the U.S. Treasury regarding the use of monies under this Agreement.

C. As required in Attachment A, Article (1) a., SUBRECIPIENT's Authorized Representative, or his/her designee has watched the video on the MDEQ <https://www.mswaterinfrastructure.com> web-page entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview."

D. All of SUBRECIPIENT's LFRF used as MCWI matching funds, as well as MCWI Grant Funds received by SUBRECIPIENT, have been or will be used for the Project detailed in this Agreement.

E. Upon request by MDEQ, SUBRECIPIENT will provide an Intergovernmental Review Certification as detailed in the MCWI Regulations.

F. SUBRECIPIENT will obligate all MCWI Grant Funds and LFRF funds used for MCWI matching funds by 11:59 p.m. on August 30, 2024.

G. If SUBRECIPIENT does not complete the Project by December 31, 2026, SUBRECIPIENT acknowledges and agrees to complete the Project with other funds.

44. **WAIVER**

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



45. **COMPLIANCE WITH MISS. CODE ANN. § 31-5-37**

If applicable, SUBRECIPIENT shall ensure that Contracted Parties and bidders solicited for contract awards pursuant to this Agreement comply with the requirements of Miss. Code. Ann. § 31-5-37. SUBRECIPIENT shall require all bidders for any contract of Five Thousand Dollars (\$5,000.00) or more procured or to be procured with funds received pursuant to this Agreement to submit a certification with their bid that said bidder will comply with the provisions of Miss. Code. Ann. § 31-5-37. In addition, within seven (7) days of any such contract award procured or to be procured with funds received pursuant to this Agreement, SUBRECIPIENT shall require the Contracted Party to submit to both SUBRECIPIENT and the Mississippi Department of Employment Security ("MDES") an employment plan which conforms to the requirements contained in Miss. Code. Ann. § 31-5-37(2).

From the date written notice of any such contract award is received and until ten (10) business days after the receipt of the employment plan by MDES, the Contracted Party and any subcontractors shall not hire any personnel to fill vacant positions for the project except residents of the State of Mississippi who are to be verified by MDES and/or those qualified individuals who are submitted by MDES. However, the Contracting Party or contractor is authorized to employ Mississippi residents to begin work immediately if such persons are verified by MDES after employment by the Contracting Party or contractor. SUBRECIPIENT shall vacate the contract award in the event the Contracting Party fails to comply with the provisions of Miss. Code Ann. § 31-5-37.

46. **CONFLICT OF INTEREST**

SUBRECIPIENT shall immediately notify MDEQ in writing of any potential conflict of interest resulting from the representation of or service to other clients or otherwise affecting this Agreement in any way. If any such conflict occurs before it is discovered, SUBRECIPIENT shall notify MDEQ of such conflict within five (5) working days of such discovery. If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this Agreement per the "Termination for Convenience" clause.

47. **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and permitted assigns.

48. **NO THIRD-PARTY BENEFICIARIES**

This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

49. **EVALUATION**

SUBRECIPIENT agrees to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project(s) to which the Agreement relates, and to provide



in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, SUBRECIPIENT agrees to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.

50. **VENUE**

Venue for the resolution of any dispute, according to Article 28 of this Agreement, shall be before the Mississippi Commission on Environmental Quality if pursuing an administrative appeal, and venue for any subsequent litigation shall be in the Chancery Court of Hinds County, Mississippi.

51. **HEADINGS**

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

52. **NOTICES**

Unless otherwise specified in the Agreement, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of document(s) (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this subsection):

If to MDEQ:

Attention:  
MCWI Contract Administration  
515 East Amite Street  
P.O. Box 2249  
Jackson, MS 39201  
E-mail: MCWIdocuments@mdeq.ms.gov

If to SUBRECIPIENT:

Attention:  
Jon McCraw  
5000 Diamondhead Circle  
Diamondhead, MS 39525  
Phone: (228) 222-4626  
E-mail: jmccraw@diamondhead.ms.gov

53. **COUNTERPARTS**

Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

For the faithful performance and consideration provided under the terms of this Agreement, the Parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
Chris Wells  
Executive Director

\_\_\_\_\_  
Date

**CITY OF DIAMONDHEAD**

\_\_\_\_\_  
Mayor Nancy Depreo  
Signature of Authorized Representative

\_\_\_\_\_  
Nancy Depreo  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## ATTACHMENT A

### PROJECT NAME, SCOPE OF WORK AND PROJECT TIMELINE AND REQUIREMENTS

#### PROJECT NAME

**Kaleki Way Stormwater Improvements**

#### SCOPE OF WORK

The Project shall be defined as eligible activities funded in whole or in part under this Agreement as follows:

The Project includes replacement of undersized driveway culverts and road culverts, relocating drainage infrastructure, repairing failing road, rehabilitating ditches, and associated appurtenances near Amoka Drive and Kaleki Way..

The general Scope of Work to be performed by SUBRECIPIENT is limited to that which was submitted in the MCWI Application Portal and approved for funding in accordance with the MCWI Program Regulations. SUBRECIPIENT hereby agrees that no additional eligible scope may be added to this Scope of Work without the express written consent of MDEQ. The Scope of Work eligible for reimbursement is limited to that identified as eligible by MDEQ and further described by plans, specifications, contract documents, and contract change orders approved as eligible by MDEQ.

#### PROJECT TIMELINE AND REQUIREMENTS

(1) SUBRECIPIENT agrees to the following schedule.

- a. Within 10 days of execution of this Agreement, SUBRECIPIENT's Authorized Representative, or his/her designee shall watch the video on the MDEQ <https://www.mswaterinfrastructure.com> web-page entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview." The web-page will track compliance with this requirement;
- b. On or about September 8, 2023, submit a complete set of plans, specifications, contract documents on each construction contract, and all applicable permits and agency approvals, if not already submitted to MDEQ;
- c. On or about September 22, 2023, advertise each construction contract for bids;

- d. On or about November 6, 2023, but no later than 45 days after advertisement for construction bids on each construction contract, receive bids;
- e. No later than 60 days after receipt of bids on each construction contract, execute construction contract;
- f. No later than 15 days after execution of construction contract, submit the entire procurement file (including but not limited to the request for proposals, evidence of publication, MBE/WBE documentation, all received bids, evaluation and selection documentation, executed construction contracts, and professional services contracts);
- g. No later than 60 days after execution of each construction contract, execute and submit a copy of the notice to proceed;
- h. No later than 5 business days after the estimated completion of 25% of construction, submit a notice to MDEQ of such milestone;
- i. No later than 5 business days after the estimated completion of 50% of construction, submit a notice to MDEQ of such milestone;
- j. No later than 5 business days after the estimated completion of 75% of construction, submit a notice to MDEQ of such milestone;
- k. No later than 5 business days after completion of each construction contract, notify MDEQ of construction completion;
- l. No later than 30 days after the contract completion date on each construction contract, submit all change orders which include time extensions, or a request and justification for delaying MDEQ's final construction observation;
- m. Within 45 days of Project completion, but no later than September 30, 2026, whichever is earlier, unless an extension of this date is specifically authorized by MDEQ, SUBRECIPIENT must submit the following: Final Report, as listed in Article 11, the engineer's certification of compliance with plans, specifications, and contract documents; final professional services contract amendments, if any; and all other administrative forms and documents required by the Agreement.

(2) To the extent any documents required to be submitted in Attachment A, Article (1) above were submitted with the MCWI Grant Application through the Application Portal, the documents do not need to be resubmitted.

(3) All documents required to be submitted in Attachment A, Article (1) above, shall be uploaded to the Documents Portal at <https://www.mswaterinfrastructure.com>.

**ATTACHMENT B****SYSTEMS AND PROCESSES FOR FINANCIAL MANAGEMENT  
RECOMMENDATIONS AND/OR CORRECTIVE ACTION PLAN**

An evaluation for the assessment of uncontrolled risks of the SUBRECIPIENT's systems and processes for financial management was performed as of part of the initial subaward process by MDEQ, acting on behalf of the State of Mississippi, as administrator of this Subaward Agreement. MDEQ requests the SUBRECIPIENT provide the following information to MDEQ as part of observations made during the evaluation. MDEQ reserves the right to re-evaluate the assessment of uncontrolled risks upon subsequently identified facts:

1. SUBRECIPIENT agrees to provide MDEQ with a copy of their annual audited financial statements within 60 days of the report release date throughout the Period of Performance.
2. SUBRECIPIENT agrees to promptly notify MDEQ of any significant changes made to the SUBRECIPIENT's current policies and procedures that would impact financial management systems and processes, specifically those communicated as part of the evaluation, from which the current residual risk levels were derived.
3. SUBRECIPIENT agrees to promptly notify MDEQ of any level of fraud or abuse discovered within the organization without regard to materiality that is related to the operation of the Project, as well as other pervasive deficiencies identified for grant management practices from any source, both external and internal, throughout the program performance period.
4. If deficiencies, significant deficiencies and/or material weaknesses are reported to the SUBRECIPIENT, as part of any assurance, attestation, or monitoring engagement during the program performance period, SUBRECIPIENT agrees to provide its response(s) and/or corrective action plan(s) to MDEQ so that prompt action can be taken by MDEQ to mitigate any elevated level of uncontrolled risk that could potentially impact MDEQ's or the SUBRECIPIENT's ability to comply with Federal Award and/or subaward requirements.
5. SUBRECIPIENT agrees that MDEQ has the right to perform monitoring procedures as deemed appropriate by MDEQ based on the assessed risk of noncompliance.



## ATTACHMENT C

### SUBAWARD TERMS AND CONDITIONS FOR CONTRACTED PARTIES

#### 1. AUTHORITY TO PARTICIPATE IN THIS AGREEMENT

The Contracted Party certifies that (a) it is either a 1) state agency, 2) a validly organized business that is authorized to do business in the state of Mississippi, 3) a nongovernmental organization, or 4) a political subdivision of the state of Mississippi with valid authority to enter into this agreement and; (b) entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (c) notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

#### 2. DEBARMENT AND SUSPENSION

Contractor/Contracted Parties certifies to the best of its knowledge and belief, that it:

A. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it 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;

C. has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for a 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;

D. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in Article 2.B. and Article 2.C., above; and,

E. has not, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

This agreement is subject to 31 C.F.R. Part 19.

#### 3. INDEMNIFICATION

To the extent allowed by state law, Contracted Party agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and the Department's contractors from and against any and all

claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of any Contracted Party, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

#### 4. **RELATIONSHIP STATUS**

The Contracted Party acknowledges and agrees that MDEQ is not a party, in any manner whatsoever, to any contract between the SUBRECIPIENT and the construction contractor(s), engineer(s), attorney(s), equipment supplier(s), contractor(s), or between any other parties of any kind whatsoever (hereinafter collectively referred to as "vendor"). The SUBRECIPIENT and Contracted Party also acknowledge and agree that any benefit to vendors contracting with the SUBRECIPIENT or Contracted Parties arising from or associated with this Agreement is strictly incidental and all such vendors are not and are not intended to be considered as third-party beneficiaries under any agreement between MDEQ and the SUBRECIPIENT.

Upon execution of any contract between the SUBRECIPIENT and any other party in regard to the project, MDEQ does not assume any authorities, duties, responsibilities, or liabilities under such contract. The SUBRECIPIENT and Contracted Party shall not have any authority to bind or otherwise obligate MDEQ, directly or indirectly, under any contract or agreement between the SUBRECIPIENT and any other party. The SUBRECIPIENT, Contracted Party and its vendors acknowledge and agree that any action taken by MDEQ in its role of grantor, or in its separate and distinct role as regulator shall not in any way change or alter its position as that of grantor.

MDEQ does not have any authority, duty, responsibility, or liability in contract claims or dispute identification, negotiation, resolution, or any other actions regarding contract claims under the contract(s) between the SUBRECIPIENT and any other party. The SUBRECIPIENT and the Contracted Party acknowledge and agree that MDEQ is not obligated to review, comment on, approve, or discuss the merits of any contract claims presented by or to any party. Any MDEQ reviews, approvals, observations, presence at meetings, written communications, verbal communications or other actions are not to be interpreted as addressing the merits of any claims, nor are they to be construed as interpreting the contract between the SUBRECIPIENT and the Contracted Party or any other parties.

#### 5. **ACCESS TO RECORDS**

Provided Contracted Party is given reasonable advance written notice and such inspection is made during normal business hours of Contracted Party, then the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contracted Party's books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the Contracted Party's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by Contracted Party for a minimum of ten (10) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the



records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

Contracted Party is not required to retain the above-mentioned records for the ten (10) year period prescribed in this Section and the "Right to Audit" provision only if all of the following conditions are satisfied:

- A. Contracted Party has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;
- B. No audit, litigation or other action arising out of or related in any way to this Project is commenced before Contracted Party provides the records and corresponding certification to MDEQ, in which case, Contracted Party shall retain the records until all issues arising out of the action are finally resolved; and
- C. Contracted Party provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

#### **6. RECORD RETENTION AND RIGHT TO AUDIT**

The Contracted Party shall maintain and retain books, documents, papers, financial records and other records, including electronic records, as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. Contracted Party shall retain these records for a period of ten (10) years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten (10) year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General. If any litigation, claim, investigation, or audit relating to this Agreement or an activity funded under the Agreement is started before the expiration of the ten (10) year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

#### **7. RIGHT TO INSPECT WORK; SITE ACCESS**

MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Upon request by MDEQ, Contracted Party shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to the performance of the Work.

#### **8. CONFLICT OF INTEREST**

The Contracted Party covenants that he presently has no interest and shall not acquire any interest direct or indirect in the Project that is the subject to this Agreement or any parcels therein, where applicable, or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contracted Party further covenants that, in the performance of this agreement, no person having any such interest shall be employed.



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

#### **9. COOPERATION AND EVALUATION**

The Contracted Party agrees to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project(s) to which the Agreement relates, and to provide in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, the Contracted Party agrees to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.

## ATTACHMENT D

### ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

#### ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, SUBRECIPIENT provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to SUBRECIPIENT's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that SUBRECIPIENT may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of SUBRECIPIENT's program(s) and activity(ies), so long as any portion of SUBRECIPIENT's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. SUBRECIPIENT ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. SUBRECIPIENT acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). SUBRECIPIENT understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, SUBRECIPIENT shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. SUBRECIPIENT understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in SUBRECIPIENT's programs, services, and activities.

3. SUBRECIPIENT agrees to consider the need for language services for LEP persons when SUBRECIPIENT develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. SUBRECIPIENT acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon SUBRECIPIENT and SUBRECIPIENT's successors, transferees, and assignees for the period in which such assistance is provided.

5. SUBRECIPIENT understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates SUBRECIPIENT, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates SUBRECIPIENT for the period during which it retains ownership or possession of the property.

6. SUBRECIPIENT shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. SUBRECIPIENT shall comply with information requests, on-site compliance reviews and reporting requirements.

7. SUBRECIPIENT shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. SUBRECIPIENT also must inform the Department of the Treasury if SUBRECIPIENT has received no complaints under Title VI.

8. SUBRECIPIENT must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the SUBRECIPIENT and the administrative agency that made the finding. If SUBRECIPIENT settles a case or matter alleging such discrimination, SUBRECIPIENT must provide documentation of the settlement. If SUBRECIPIENT has not been the subject of any court or administrative agency finding of discrimination, please so state.



**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY  
MISSISSIPPI MUNICIPALITY AND COUNTY WATER INFRASTRUCTURE GRANT**

**STATE OF MISSISSIPPI  
COUNTY OF HINDS**

**MDEQ AGREEMENT NO. 610-2-SW-5.6**

**SUBAWARD AGREEMENT**

This document is a Subaward Agreement (this "Agreement") between the Mississippi Department of Environmental Quality ("MDEQ"), a Pass-through entity as defined in 2 C.F.R. § 200.1, and City of Diamondhead, UEI Number: K9M1T71V8JM9 ("SUBRECIPIENT", and together with MDEQ, the "Parties", and each, a "Party") to provide grant funds for the Work conducted under the Mississippi Municipality and County Water Infrastructure ("MCWI") Grant Program (the "Program") as specified in Article 4.

**1. SOURCE OF FUNDS**

The grant funds provided by this Agreement are made available pursuant to the Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131), provided through funds awarded to the State of Mississippi pursuant to the American Rescue Plan Act of 2021 ("ARPA"), Public Law 117-2 (March 11, 2021), provided through the U.S. Department of Treasury pursuant to Federal Award # SLFRP0003 and CFDA No. 21.027 (Coronavirus State and Local Fiscal Recovery Funds) awarded on May 10, 2021, and subsequently to MDEQ through Mississippi Senate Bill 3056, 2022 Regular Session (April 26, 2022) and Mississippi House Bill 1716, 2023 Regular Session (March 22, 2023).

**2. PROJECT**

Under this Agreement, MDEQ agrees to disburse funds to SUBRECIPIENT in accordance with the terms herein to reimburse the costs associated with SUBRECIPIENT's implementation of the project entitled "Kalae Street Stormwater Improvements" (the "Project").

**3. PURPOSE**

The purpose of this Project is to make a necessary investment in an upgrade to SUBRECIPIENT's infrastructure. The Project is not for Research and Development.

**4. SCOPE OF WORK**

SUBRECIPIENT shall perform the tasks as described and identified in Attachment A, Scope of Work (the "Work").

**5. TERMS AND CONDITIONS**

SUBRECIPIENT is subject to U.S. Treasury's regulations governing ARPA, and all applicable terms and conditions in 2 C.F.R. Part 200 of the Office of Management and Budget ("OMB") Uniform Guidance for Grants and Cooperative Agreements, as amended, including

Appendix II to Part 200, and all other OMB circulars, executive orders or other federal laws or regulations applicable to the services provided under this Agreement. All of these terms and conditions of this Agreement apply to SUBRECIPIENT and, as applicable, its Contractors/Contracted Parties.

#### 6. PERIOD OF PERFORMANCE

The Period of Performance shall commence upon the execution of this Agreement and shall end on **September 30, 2026**. Costs incurred on March 3, 2021, or thereafter, but prior to the commencement of the Period of Performance may be reimbursed provided MDEQ determines such costs are allowable and eligible. SUBRECIPIENT agrees to complete all tasks included in the Scope of Work within this Period of Performance, unless otherwise specified in writing by MDEQ. If, at any time during the Period of Performance of this Agreement, SUBRECIPIENT determines, based on the Work performed to date, that the Work cannot be completed within the Period of Performance, SUBRECIPIENT shall so notify MDEQ immediately in writing.

Failure to adhere to the requirements placed on MCWI funds can result in termination of this Agreement and may result in a demand for repayment by MDEQ. Moreover, if MDEQ is required to return any funds as a result of misspending on the part of SUBRECIPIENT, MDEQ reserves the right to seek and receive repayment of the amount of funds in question.

#### 7. CONSIDERATION AND PAYMENT

A. *Project Cost.* The total Project cost shall not exceed **\$120,789.00**, with said amount broken down as follows:

- i. MCWI Grant Funds shall not exceed **\$58,515.56**;
- ii. The Local Fiscal Recovery Funds ("LFRF") received by SUBRECIPIENT from the U.S. Treasury or the Mississippi Department of Finance and Administration used as matching funds in this Agreement shall not exceed **\$58,515.56**;
- iii. Any LFRF transferred to SUBRECIPIENT from a county or municipality ("Transferred LFRF") shall not exceed **\$0.00**;
- iv. Any other funds that SUBRECIPIENT obligates(ed) to the project that are not eligible for MCWI match ("Other Funds") shall not exceed **\$3,757.88**.

B. Professional fees that will be reimbursed with MCWI Grant Funds shall not exceed **\$4,831.56**. This amount is included in, and is not in addition to, the maximum MCWI Grant Funds specified in Article 7.A.i, above and Article 7.C., below.

SUBRECIPIENT understands and acknowledges that the amount of professional fees, as defined in the MCWI Regulations, Rule 1.1 E. (18), that may be matched with MCWI Grant Funds is limited to no more than 4% of the total amount of costs actually incurred on the Project, which in no case may be more than the total Project cost set forth in Article 7.A., above.



C. *Consideration.* As consideration for the performance of the tasks included in this Agreement, MDEQ agrees to reimburse SUBRECIPIENT an amount not to exceed **Fifty-Eight Thousand Five Hundred Fifteen Dollars and Fifty-Six Cents (\$58,515.56)** (the "Maximum Amount").

MDEQ is under no obligation to provide funds to SUBRECIPIENT if SUBRECIPIENT has not met, or does not continue to meet, minimum federal requirements to receive funds, such as but not limited to, adhering to applicable procurement requirements found in 2 C.F.R. Part 200 *et al.* Moreover, MDEQ bears no responsibility relative to SUBRECIPIENT's expenditure of its own funds. To that end, in the process of review of documentation for reimbursement, as well as compliance monitoring activities associated with the Program, MDEQ is not responsible or liable for any expenditure made by SUBRECIPIENT with its funds. As such, SUBRECIPIENT is solely responsible for compliance with federal and state requirements associated with its LFRF, its LFRF Transferred Funds, and any other funds it uses towards its Project that are not a part of the MCWI Grant Funds. SUBRECIPIENT must substantiate all expenditures in a compliant manner. MDEQ is under no obligation to reimburse costs incurred that are not demonstrably compliant with federal and state law.

D. *Payment.* Subject to available funding, as set forth in the terms and conditions of this Agreement, MDEQ shall pay all properly invoiced amounts due to SUBRECIPIENT within forty-five (45) days after MDEQ's receipt of such invoice, except for any amounts disputed by MDEQ in good faith. Legislative approval may be required where MDEQ receives any claim of payment from SUBRECIPIENT that includes Work performed outside a one (1) year period from receipt of such invoice.

i. *Request for Payment.* SUBRECIPIENT shall request payment of funds hereunder for Project costs on a reimbursement basis (such requests, "Reimbursement Requests"), unless otherwise directed by MDEQ. SUBRECIPIENT shall submit Reimbursement Requests and supporting documentation of costs incurred as required by MDEQ to the MCWI Reimbursement Portal, located at <https://www.mswaterinfrastructure.com>. All Reimbursement Requests for time periods ending June 30 of any year, during the Period of Performance under this Agreement, shall be submitted no later than July 31 of that same year. Final invoice(s) shall be submitted to MDEQ no later than September 30, 2026. The Reimbursement Request shall include, at a minimum, breakdowns of personnel, position, dates worked, tasks performed, and totals for contract costs, materials, supplies and equipment, included in the Reimbursement Request. SUBRECIPIENT shall make Reimbursement Requests in accordance with the following procedures and subject to the following terms and conditions:

1. SUBRECIPIENT may make Reimbursement Requests no more frequently than once monthly during the Period of Performance of this Agreement.



2. SUBRECIPIENT shall request payment under this Agreement only for the costs necessary to complete the Scope of Work specifically stated and required under this Agreement.

3. SUBRECIPIENT shall not request payment under this Agreement for other services or other work the SUBRECIPIENT or its contractors may provide under any other Subaward or Contract not related to this Project.

4. SUBRECIPIENT shall provide on each Reimbursement Request the amount of its LFRF, Transferred LFRF and Other Funds expended. SUBRECIPIENT shall also provide the amount requested for professional fees. MDEQ will then determine the amount of MCWI Grant Funds that each Reimbursement Request qualifies for within the Program regulations and procedures.

5. SUBRECIPIENT understands that no payment, including final payment, shall be interpreted as acceptance of defective and incomplete Work, and SUBRECIPIENT shall remain responsible for performance in strict compliance with this Agreement. If MDEQ rejects, condemns or fails to approve any part of the Scope of Work, it may issue a Notice to Cure or terminate this Agreement.

6. MDEQ reserves the right to refuse to pay all or any part of the funds requested in a Reimbursement Request for any of the following reasons: 1) at MDEQ's discretion, the costs SUBRECIPIENT is seeking reimbursement for are not reasonable or necessary for the completion of the Work in this Agreement, 2) at MDEQ's discretion, the costs are ineligible for reimbursement under this Project, 3) at the time the request is submitted SUBRECIPIENT has failed to comply with any term or condition of this Agreement, 4) at the time the request is submitted the SUBRECIPIENT has otherwise failed to perform the Work to date in accordance with the Scope of Work, or 5) at the time the request is submitted the SUBRECIPIENT has otherwise failed to comply with applicable state, federal, or local laws and regulations.

ii. *Indirect Cost Rate.* Reimbursement of indirect costs and/or overhead is not allowed under this Agreement.

E. *Limitations on Expenditures.* MDEQ shall reimburse SUBRECIPIENT only for documented expenditures incurred on or after March 3, 2021: (i) reasonable and necessary to carry out the Scope of Work described in Attachment A; (ii) documented by contracts or other evidence of liability and (iii) incurred in accordance with all applicable requirements for the expenditure of funds payable under this Agreement.

F. *Improper Payments.* Any item of expenditure by SUBRECIPIENT under the terms of this Agreement which is found by auditors, investigators, other authorized

representatives of MDEQ, the U.S. Treasury, the Mississippi State Auditor or other federal or state instrumentality to be improper, unallowable, in violation of federal or state law, or the terms of this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of SUBRECIPIENT shall become SUBRECIPIENT's liability, and shall be paid solely by SUBRECIPIENT, immediately upon notification of such, from funds other than those provided by MDEQ under this Agreement. This provision shall survive the expiration or termination of this Agreement.

Any funds that are paid by MDEQ to SUBRECIPIENT that are not necessary for the completion of the Work in this Agreement and/or that are deemed ineligible must be returned to MDEQ immediately upon receiving MDEQ's written notification for return of funds.

G. *Clawback.* If funds are expended improperly or if an expense submitted for reimbursement is disallowed or deemed ineligible under federal, state or local laws and regulations, then payments to SUBRECIPIENT may be subject to clawback by MDEQ, the State of Mississippi or the U.S. Treasury.

#### 8. **AMENDMENTS OR MODIFICATION**

This Agreement may only be amended, modified, or supplemented by written agreement signed by the Parties hereto.

#### 9. **PROGRESS REPORTS**

SUBRECIPIENT shall provide required progress reports during the Period of Performance of this Agreement in a format prescribed by MDEQ. These reports shall be submitted in accordance with the following schedule, which may be amended from time to time:

<u>REPORTING PERIOD</u>	<u>DEADLINE</u>
October – December	January 15
January – March	April 15
April – June	July 15
July – September	October 15

This provision shall survive the expiration or termination of this Agreement with respect to any reports which SUBRECIPIENT is required to submit to MDEQ following the expiration or termination of this Agreement.

#### 10. **FAILURE TO TIMELY PERFORM**

SUBRECIPIENT shall take all reasonable measures to ensure MCWI Grant Funds and LFRF used for MCWI matching funds are obligated by 11:59 p.m. on August 30, 2024. SUBRECIPIENT acknowledges and agrees that its failure to obligate MCWI Grant Funds and



LFRF used for MCWI matching funds by 11:59 p.m. on August 30, 2024, may result in MDEQ modifying the MCWI Grant Funds awarded or terminating this Agreement.

If SUBRECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof authorized by MDEQ or if SUBRECIPIENT otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUBRECIPIENT in writing of the delay or nonperformance. If such delay or nonperformance is not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may terminate SUBRECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to perform properly.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUBRECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUBRECIPIENT in which the State has an interest.

#### **11. FINAL PAYMENT AND REPORT**

When SUBRECIPIENT has performed all the Work, SUBRECIPIENT shall transmit to MDEQ a comprehensive report on the Work in a format prescribed by MDEQ (the "Final Report"). The Final Report shall be provided by SUBRECIPIENT to MDEQ within forty-five (45) days of Project completion in a format prescribed by MDEQ. Upon acceptance of Final Report, MDEQ will process final Reimbursement Request.

Upon satisfactory completion of the Work performed under this Agreement, as a condition before final payment under this Agreement or as a termination settlement under this Agreement, SUBRECIPIENT shall certify to MDEQ, on a form provided by MDEQ, that the final payment amount is the remaining amount that SUBRECIPIENT is owed under this Agreement and that no additional payment for its Work under this Project will be submitted for reimbursement. Unless otherwise provided in the Agreement, by state law or otherwise expressly agreed to by the Parties in this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of MDEQ's claims against SUBRECIPIENT or its sureties under this Agreement.

In consideration of the execution of this Agreement by MDEQ, SUBRECIPIENT agrees that acceptance of final payment from MDEQ will constitute an agreement by SUBRECIPIENT to release and forever discharge MDEQ, its agents, employees, officers, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which SUBRECIPIENT has at the time of acceptance of final payment or may thereafter have, arising out of, in connection with or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this Agreement.

#### **12. FINANCIAL MANAGEMENT AND COMPLIANCE**

MDEQ requires that SUBRECIPIENT have in place, prior to the receipt of funds, a financial management system that will be able to isolate and trace every dollar funded under this Agreement from receipt to expenditure and have on file appropriate support documentation for each transaction. Examples of documentation include but are not limited to copies of checks paid



to vendors, vendor invoices, bills of lading, purchase vouchers, payrolls, bank statements and reconciliations, and real property and easement appraisals. Prior to the submittal of any such documentation to MDEQ, SUBRECIPIENT shall redact, in accordance with the definition of "Protected Personally Identifiable Information" ("Protected PII") as defined in 2 C.F.R. § 200.1, all information reflecting an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII as defined in 2 C.F.R. § 200.1 that is required by law to be disclosed. SUBRECIPIENT and any Contracted Parties (as such term is defined in Article 13 of this Agreement) are limited to the travel rates of the State of Mississippi, including dining and hotels, in place at the time of the expenditure for which reimbursement is sought; and SUBRECIPIENT shall audit any such invoice for same, clearly indicating the actual expense and the adjustment, if any.

SUBRECIPIENT certifies that all information provided to MDEQ or its representatives as part of the initial risk assessment for this Work is complete and accurate. SUBRECIPIENT agrees to submit to and cooperate with MDEQ in any additional risk assessment evaluation and periodic audit procedures to ensure adequate financial management of all funds. Further, SUBRECIPIENT shall continue to implement any recommendations and/or corrective action plan set forth in the report transmitted to SUBRECIPIENT based on the findings of the systems and processes for financial management, a copy of which is attached hereto as Attachment B and incorporated herein in its entirety.

### 13. CONTRACTS

SUBRECIPIENT shall be responsible for accountability of funds, compliance with Project specifications, and Project management by its contractors. MDEQ shall not bear responsibility for any liability caused or incurred by any contractor in performing Work. MDEQ shall not be deemed by virtue of this Agreement to have any contractual obligation to, or relationship with, any of SUBRECIPIENT's contractors, and the Parties agree and acknowledge that, as between MDEQ and SUBRECIPIENT, all Work shall be deemed to be the responsibility of, and performed by, SUBRECIPIENT. No contractor or other recipient of funds from MDEQ under this Agreement shall be deemed to be an agent, representative, employee or servant of MDEQ in connection with this Agreement. The parties with whom contracts or subaward agreements are entered into by the SUBRECIPIENT shall be referred to herein as "Contractor", "Contracted Party", or "Contracted Parties". In addition to ensuring that its Contracted Parties follow the applicable terms in this Agreement, SUBRECIPIENT shall require all terms and conditions set forth in Attachments A and C attached hereto to be included in all agreements between the SUBRECIPIENT and Contracted Parties, and in all agreements between Contracted Parties and Contracted Parties' contractors/sub-contractors.

### 14. APPLICABLE LAW

The Agreement shall be governed by and construed in accordance with the laws and regulations of the State of Mississippi and applicable federal law excluding, its conflict of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State.

SUBRECIPIENT shall comply with applicable federal, state, and local laws and regulations, including, but not limited to, the following:

A. *Authorizing Statutes.* Section 603 of the Social Security Act (42 U.S.C. § 803), as added by section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) and the Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131).

B. *Implementing Regulations.* Subpart A of 31 C.F.R. Part 35 (Coronavirus State and Local Fiscal Recovery Funds), as adopted in the Coronavirus State and Local Fiscal Recovery Funds interim final rule (86 Fed. Reg. 26786, applicable May 17, 2021 through March 31, 2022) and final rule (87 Fed. Reg. 4338, applicable January 27, 2022 through the end of the ARP/CSLFRF award term), and other subsequent regulations implementing Section 603 of the Social Security Act (42 U.S.C. § 803), as well as MDEQ regulations, entitled “Mississippi Commission on Environmental Quality Regulations for the Mississippi Municipality and County Water Infrastructure Grant Program.”

C. *Guidance Documents.* Applicable guidance documents issued from time-to-time by the US Department of Treasury and MDEQ, including the currently applicable version of the *Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds*.<sup>1</sup>

D. *Licenses, Certifications, Permits, Accreditation.* SUBRECIPIENT shall obtain and keep current any license, certification, permit, or accreditation required by federal, state, or local law and shall submit to MDEQ proof of any licensure, certification, permit or accreditation upon request.

## 15. **AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of MDEQ to proceed under this Agreement is conditioned upon the availability of the funds from state, federal, and/or other funding sources. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or 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 MDEQ, MDEQ shall have the right upon ten (10) working days written notice to the SUBRECIPIENT, to terminate this Agreement without damage, penalty, cost or expenses to MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

## 16. **REPRESENTATION REGARDING CONTINGENT FEES**

SUBRECIPIENT represents that it has not retained a person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

<sup>1</sup> <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.



## 17. REPRESENTATION REGARDING GRATUITIES

SUBRECIPIENT represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* and Section 9.105 (Gratuities) of the Mississippi Procurement Manual.

## 18. UNIFORM ADMINISTRATIVE REQUIREMENTS

SUBRECIPIENT shall comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 2 C.F.R. Part 200 ("UG"), as adopted by the Department of Treasury at 2 C.F.R. Part 1000 and as set forth in the Assistance Listing for ARP/CSLFRF (21.027). These requirements dictate how SUBRECIPIENT must administer the Subaward and how MDEQ must oversee SUBRECIPIENT. As a condition of receipt of the grant funds authorized in this Agreement, SUBRECIPIENT agrees to watch the video entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview" found at <https://www.mswaterinfrastructure.com>.

The applicable UG provisions are as follows:

- Subpart A, Acronyms and Definitions;
- Subpart B, General Provisions;
- Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards (except 2 C.F.R. §§ 200.204, .205, .210, and .213);
- Subpart D, Post Federal Award Requirements (except 2 C.F.R. §§ 200.305(b)(8) and (9), .308, .309, and .320(c)(4));
- Subpart E, Cost Principles;
- Subpart F, Audit Requirements;
- 2 C.F.R. Part 25 (Universal Identifier and System for Award Management);
- 2 C.F.R. Part 170 (Reporting Subaward and Executive Compensation Information); and
- 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)).

SUBRECIPIENT shall document compliance with UG requirements, including adoption and implementation of all required policies and procedures, within thirty (30) days of the execution of this Agreement and during all subsequent reviews during the term of the Agreement. It is SUBRECIPIENT's responsibility to comply with all UG requirements. Failure to do so may result in termination of the Agreement by MDEQ.

All real property acquired or improved, and equipment or supplies purchased in whole or in part with MCWI Grant Funds and/or LFRF, must be used, insured, managed, and disposed of in accordance with 2 C.F.R. § 200.311 through 2 C.F.R. § 200.316.



## 19. SUBAWARDS

If SUBRECIPIENT is authorized by MDEQ to make a Subaward, SUBRECIPIENT must include and incorporate the terms and conditions of this Agreement and any attachments, in all lower tier Subawards. Further, SUBRECIPIENT, who makes a Subaward, must follow and carry out all the responsibilities of a Pass-through entity described at 2 C.F.R. Part 200.

## 20. COMPLIANCE WITH LAWS

SUBRECIPIENT understands that MDEQ is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and SUBRECIPIENT agrees during the Period of Performance of the Agreement that SUBRECIPIENT will strictly adhere to this policy in its employment practices and work performance under this Agreement. SUBRECIPIENT shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified.

SUBRECIPIENT along with any sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d *et seq.*, as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement. Further, SUBRECIPIENT agrees to comply with the provisions of Attachment D to this Agreement.

Nothing contained in this Agreement may be deemed or construed in any way to stop, limit, or impair MDEQ from exercising or performing any regulatory, legislative, governmental, or other powers or functions.

SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under ARPA, including the information provided by the State and Local Fiscal Recovery Fund Final Rule.<sup>2</sup>

SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under the Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131).<sup>3</sup>

<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>

<sup>3</sup> <http://billstatus.ls.state.ms.us/documents/2023/pdf/SB/2400-2499/SB2444SG.pdf>

SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under the Regulations promulgated by MDEQ.<sup>4</sup>

## 21. **STOP WORK ORDER**

A. *Order to Stop Work:* MDEQ may, by written order to SUBRECIPIENT at any time and without notice to any surety, require SUBRECIPIENT to stop all or any part of the Work called for by this Agreement. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to SUBRECIPIENT, 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, SUBRECIPIENT shall forthwith comply with its terms and take all reasonable 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, MDEQ shall either:

- i. cancel the stop work order; or
- ii. terminate the Work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this Agreement.

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, SUBRECIPIENT shall have the right to resume Work. An appropriate adjustment may be made in the Period of Performance or Maximum Amount, or both, and the Agreement shall be modified in writing accordingly if:

- i. The stop work order results in an increase in the time required for, or in SUBRECIPIENT's cost properly allocable to, the performance of any part of this Agreement; and
- ii. SUBRECIPIENT provides a written claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that MDEQ decides that the facts justify such action and any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

C. *Termination of Stopped Work:* If a stop work order is not canceled and the Work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order may be allowed by adjustment or otherwise.

## 22. **E-PAYMENT**

SUBRECIPIENT agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. MDEQ agrees to make payment in

<sup>4</sup> <https://mswaterinfrastructure.com/wp-content/uploads/2022/07/MCW1-Grant-Program-Regulations-revised-12-16-22.pdf>



accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305.

### 23. INTERVENTIONS

If MDEQ determines that SUBRECIPIENT is not in compliance with this Agreement, MDEQ may initiate an intervention, in accordance with 2 C.F.R. § 200.208 and 2 C.F.R. § 200.339. The degree of SUBRECIPIENT’s performance or compliance deficiency will determine the degree of intervention. All possible interventions are listed below and will depend on the degree of deficiency in SUBRECIPIENT’s performance or compliance deficiency.

If MDEQ determines that an intervention is warranted, it shall provide written notice to SUBRECIPIENT of the intervention within thirty (30) days of the completion of a report review, desk review, onsite review, audit review, or procedures engagement review, or as soon as possible after MDEQ otherwise learns of a compliance or performance deficiency related to the execution of this Agreement. The written notice shall notify SUBRECIPIENT of the following related to the intervention:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the action needed to remove the additional requirement, if applicable;
- (4) The time allowed for completing the actions if applicable; and
- (5) The method for requesting reconsideration of the additional requirements imposed.

MDEQ may impose, but is not limited to, the following interventions on SUBRECIPIENT, based on the level of the compliance or performance deficiency that MDEQ determines:

**Level 1 Interventions.** These interventions may be required for minor compliance or performance issues:

- (1) SUBRECIPIENT addresses specific internal control, documentation, financial management, compliance, or performance issues within a specified time period; and/or
- (2) More frequent or more thorough reporting by the SUBRECIPIENT; and/or
- (3) More frequent monitoring by MDEQ; and/or
- (4) Required SUBRECIPIENT technical assistance or training.

**Level 2 Interventions.** These interventions may be required for more serious compliance or performance issues:

- (1) Restrictions on funding payment requests by SUBRECIPIENT; and/or
- (2) Disallowing payments to SUBRECIPIENT; and/or
- (3) Requiring repayment for disallowed cost items; and/or
- (4) Imposing probationary status on SUBRECIPIENT.

**Level 3 Interventions.** These interventions may be required for significant and/or persistent compliance or performance issues:



- (1) Temporary or indefinite funding suspension to SUBRECIPIENT; and/or
- (2) Nonrenewal of funding to SUBRECIPIENT in subsequent year; and/or
- (3) Terminate funding to SUBRECIPIENT in the current year; and/or
- (4) Initiate legal action against SUBRECIPIENT.

Interventions will remain in place until the underlying performance or compliance deficiency is addressed to the sole satisfaction of MDEQ.

#### 24. **E-VERIFICATION**

If applicable, SUBRECIPIENT represents and certifies that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1, *et seq.* The term “employee” as used herein means any person that is hired to perform work within the State. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. SUBRECIPIENT agrees to maintain records of such compliance. Upon request of the State of Mississippi and after approval of the Social Security Administration or Department of Homeland Security, when required, SUBRECIPIENT agrees to provide a copy of each such verification. SUBRECIPIENT further represents and certifies that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws.

#### 25. **TRANSPARENCY**

This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983” and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this Agreement is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Agreement may be posted to the Department of Finance and Administration’s independent agency Agreement website for public access at <https://www.transparency.mississippi.gov>. Information identified by SUBRECIPIENT as trade secrets or other proprietary information, including confidential vendor information, or any other information which is required to be confidential by state or federal law or outside the applicable freedom of information statutes will be redacted.

#### 26. **PAYMODE**

Payments by state agencies using the statewide accounting system shall be made and remittance information provided electronically as directed by MDEQ. These payments shall be deposited into the bank account of SUBRECIPIENT’s choice. MDEQ may, at its sole discretion, require SUBRECIPIENT to submit invoices and supporting documentation electronically at any time during the Period of Performance of this Agreement. SUBRECIPIENT understands and

agrees that MDEQ is exempt from the payment of taxes. All payments shall be in United States currency.

## 27. **TERMINATION**

The Agreement may be terminated as follows:

### A. *Termination For Convenience.*

The MDEQ may, when the interests of the State so require, terminate this Agreement in whole or in part, for the convenience of the State. MDEQ shall give written notice of the termination to SUBRECIPIENT specifying the part of the Agreement terminated and when termination becomes effective.

### B. *Termination For Default.*

If SUBRECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof or otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUBRECIPIENT in writing of the delay or nonperformance, and if not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may terminate SUBRECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUBRECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUBRECIPIENT in which the State has an interest.

### C. *Termination Upon Bankruptcy.*

This Agreement may be terminated in whole or in part by MDEQ upon written notice to SUBRECIPIENT, if SUBRECIPIENT should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by SUBRECIPIENT of an assignment for the benefit of its creditors. In the event of such termination, SUBRECIPIENT shall be entitled to recover just and equitable compensation for satisfactory Work performed under this Agreement, but in no case shall said compensation exceed the total Maximum Amount.

## 28. **DISPUTES**

Before pleading to any judicial system at any level, SUBRECIPIENT must exhaust all administrative remedies. A written complaint must first be sent to the Executive Director of MDEQ. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to SUBRECIPIENT within fourteen (14) days after receipt of information



requested by MDEQ or the Executive Director. If the decision of the Executive Director does not resolve the matter, successive administrative remedies may, at SUBRECIPIENT's option, include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Miss. Code Ann. §§ 49-17-35 and -41. In the alternative, at SUBRECIPIENT's option, the decision of the Executive Director may be deemed the final agency action on the complaint. Appeals from the decision of the Executive Director or the Commission shall follow procedures outlined in Miss. Code Ann. § 49-17-41.

29. **ANTI-ASSIGNMENT/CONTRACTING**

SUBRECIPIENT shall not assign, contract, or otherwise transfer this Agreement, in whole or in part without the prior written consent of MDEQ, which MDEQ may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MDEQ of any contract shall be deemed in any way to provide for the incurrence of any obligation of MDEQ in excess of the Maximum MCWI Grant Fund amount set forth in this Agreement, nor create any contractual relationship between MDEQ and any Contracted Parties. Contracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that MDEQ may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the Parties.

30. **AUTHORITY TO PARTICIPATE IN THIS AGREEMENT**

SUBRECIPIENT certifies and acknowledges it is a Mississippi county, municipality or public utility, as defined in MCWI regulation, Rule 1.1. E. (17), and that it has LFRF to use as match funding for this grant. SUBRECIPIENT further certifies and acknowledges that its entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

31. **DEBARMENT AND SUSPENSION**

SUBRECIPIENT certifies to the best of its knowledge and belief, that it, and its Contracted Parties:

A. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. have not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it 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 Agreement or Contract under a public transaction;

C. have not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for a 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;

D. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in Article 31. B. and Article 31. C., above; and

E. have not, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

### 32. **FAILURE TO ENFORCE**

Failure by MDEQ, at any time, to enforce the provisions of this Agreement shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of this Agreement or any part thereof or the right of MDEQ to enforce any provision at any time in accordance with its terms.

### 33. **INDEMNIFICATION**

SUBRECIPIENT agrees to maintain responsibility for the Project and agrees to provide proper operation and maintenance of all facilities for the life of the Project. SUBRECIPIENT's tort liability, if it is an entity of the State of Mississippi, is determined and controlled in accordance with Miss. Code Ann. §§ 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering this liability or of eliminating any defense available to the State under statute.

To the extent allowed by state law, SUBRECIPIENT agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and MDEQ's contractors from and against any and all claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of SUBRECIPIENT, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

### 34. **SUBRECIPIENT STATUS**

SUBRECIPIENT shall, during the entire Period of Performance of this Agreement, be construed to be an independent SUBRECIPIENT. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship or a joint venture relationship.

SUBRECIPIENT represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who are qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of MDEQ.

Any person assigned by SUBRECIPIENT to perform the services hereunder shall be an employee or independent contractor of SUBRECIPIENT, who shall have the sole right to hire and discharge its employees and/or independent contractors under this Agreement.

SUBRECIPIENT shall pay, when due, all salaries and wages of its employees and accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. This provision is solely for the benefit of MDEQ, and nothing herein shall be construed to create or impose any contractual or agency relationship between MDEQ and SUBRECIPIENT'S contractors, subcontractors, employees or agents.

35. **INSURANCE**

SUBRECIPIENT and its Contracted Parties agree to and shall maintain insurance that is required by applicable state, federal, and local laws and regulations.

36. **ENTIRE AGREEMENT**

This Agreement, including all attachments, represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This Agreement may be altered, amended, or modified only by a written document executed by MDEQ and SUBRECIPIENT. SUBRECIPIENT acknowledges that it has thoroughly read this Agreement and all its attachments and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein.

37. **ORAL STATEMENTS**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. All modifications to the Agreement must be made in writing by the MDEQ and agreed to by SUBRECIPIENT.

38. **RECORD RETENTION AND ACCESS TO RECORDS**

Provided SUBRECIPIENT is given reasonable advance written notice and such inspection is made during normal business hours of SUBRECIPIENT, the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of SUBRECIPIENT's books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the SUBRECIPIENT's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by SUBRECIPIENT for a minimum of ten (10) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

SUBRECIPIENT is not required to retain the above-mentioned records for the ten-year period prescribed in this Article and Article 39 only if all of the following conditions are satisfied:



A. SUBRECIPIENT has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;

B. No audit, litigation or other action arising out of or related in any way to this Project is commenced before SUBRECIPIENT provides the records and corresponding certification to MDEQ, in which case, SUBRECIPIENT shall retain the records until all issues arising out of the action are finally resolved; and

C. SUBRECIPIENT provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

39. **RIGHT TO AUDIT**

SUBRECIPIENT shall maintain all financial records, including electronic financial records, as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. SUBRECIPIENT shall retain these records for a period of ten (10) years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten (10) year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General. If any litigation, claim, investigation, or audit relating to this Agreement or an activity funded under the Agreement is started before the expiration of the ten (10) year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

40. **RIGHT TO INSPECT WORK; ACCESS**

MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Notwithstanding any review or inspection by MDEQ and their representatives, invitees, and consultants, SUBRECIPIENT shall not be relieved of its responsibility for performance of the Work or the submission of reports as expressly set forth in this Agreement solely by virtue of such inspection or review of the Work. SUBRECIPIENT shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to SUBRECIPIENT's performance of the Work.

41. **SEVERABILITY**

If any part of this Agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the Parties shall amend the Agreement as necessary to reflect the original intent of the Parties and to bring any invalid or unenforceable provisions in compliance with applicable law.



42. **THIRD PARTY ACTION NOTIFICATION**

SUBRECIPIENT shall give the MDEQ prompt notice in writing of any action or suit filed, and prompt notice of any claim made against SUBRECIPIENT by any entity that may result in litigation related in any way to this Agreement.

43. **CERTIFICATIONS**

SUBRECIPIENT's execution of this Agreement shall be deemed as acknowledgement, guarantee and certification by SUBRECIPIENT of the following:

A. SUBRECIPIENT has sufficient LFRF in its possession that it will use to match MCWI Grant Funds.

B. SUBRECIPIENT will follow and abide by all ARPA guidelines, guidance, rules, regulations, and other criteria, as may be amended from time to time, by the U.S. Treasury regarding the use of monies under this Agreement.

C. As required in Attachment A, Article (1) a., SUBRECIPIENT's Authorized Representative, or his/her designee has watched the video on the MDEQ <https://www.mswaterinfrastructure.com> web-page entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview."

D. All of SUBRECIPIENT's LFRF used as MCWI matching funds, as well as MCWI Grant Funds received by SUBRECIPIENT, have been or will be used for the Project detailed in this Agreement.

E. Upon request by MDEQ, SUBRECIPIENT will provide an Intergovernmental Review Certification as detailed in the MCWI Regulations.

F. SUBRECIPIENT will obligate all MCWI Grant Funds and LFRF funds used for MCWI matching funds by 11:59 p.m. on August 30, 2024.

G. If SUBRECIPIENT does not complete the Project by December 31, 2026, SUBRECIPIENT acknowledges and agrees to complete the Project with other funds.

44. **WAIVER**

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

45. **COMPLIANCE WITH MISS. CODE ANN. § 31-5-37**

If applicable, SUBRECIPIENT shall ensure that Contracted Parties and bidders solicited for contract awards pursuant to this Agreement comply with the requirements of Miss. Code. Ann. § 31-5-37. SUBRECIPIENT shall require all bidders for any contract of Five Thousand Dollars (\$5,000.00) or more procured or to be procured with funds received pursuant to this Agreement to submit a certification with their bid that said bidder will comply with the provisions of Miss. Code. Ann. § 31-5-37. In addition, within seven (7) days of any such contract award procured or to be procured with funds received pursuant to this Agreement, SUBRECIPIENT shall require the Contracted Party to submit to both SUBRECIPIENT and the Mississippi Department of Employment Security ("MDES") an employment plan which conforms to the requirements contained in Miss. Code. Ann. § 31-5-37(2).

From the date written notice of any such contract award is received and until ten (10) business days after the receipt of the employment plan by MDES, the Contracted Party and any subcontractors shall not hire any personnel to fill vacant positions for the project except residents of the State of Mississippi who are to be verified by MDES and/or those qualified individuals who are submitted by MDES. However, the Contracting Party or contractor is authorized to employ Mississippi residents to begin work immediately if such persons are verified by MDES after employment by the Contracting Party or contractor. SUBRECIPIENT shall vacate the contract award in the event the Contracting Party fails to comply with the provisions of Miss. Code Ann. § 31-5-37.

46. **CONFLICT OF INTEREST**

SUBRECIPIENT shall immediately notify MDEQ in writing of any potential conflict of interest resulting from the representation of or service to other clients or otherwise affecting this Agreement in any way. If any such conflict occurs before it is discovered, SUBRECIPIENT shall notify MDEQ of such conflict within five (5) working days of such discovery. If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this Agreement per the "Termination for Convenience" clause.

47. **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and permitted assigns.

48. **NO THIRD-PARTY BENEFICIARIES**

This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

49. **EVALUATION**

SUBRECIPIENT agrees to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project(s) to which the Agreement relates, and to provide



in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, SUBRECIPIENT agrees to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.

50. **VENUE**

Venue for the resolution of any dispute, according to Article 28 of this Agreement, shall be before the Mississippi Commission on Environmental Quality if pursuing an administrative appeal, and venue for any subsequent litigation shall be in the Chancery Court of Hinds County, Mississippi.

51. **HEADINGS**

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

52. **NOTICES**

Unless otherwise specified in the Agreement, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of document(s) (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this subsection):

If to MDEQ:

Attention:  
MCWI Contract Administration  
515 East Amite Street  
P.O. Box 2249  
Jackson, MS 39201  
E-mail: MCWIdocuments@mdeq.ms.gov

If to SUBRECIPIENT:

Attention:  
Jon McCraw  
5000 Diamondhead Circle  
Diamondhead, MS 39525  
Phone: (228) 222-4626  
E-mail: jmccraw@diamondhead.ms.gov



53. **COUNTERPARTS**

Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

For the faithful performance and consideration provided under the terms of this Agreement, the Parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
Chris Wells  
Executive Director

\_\_\_\_\_  
Date

**CITY OF DIAMONDHEAD**

\_\_\_\_\_  
Mayor Nancy Depreo  
Signature of Authorized Representative

\_\_\_\_\_  
Nancy Depreo  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## ATTACHMENT A

### PROJECT NAME, SCOPE OF WORK AND PROJECT TIMELINE AND REQUIREMENTS

#### PROJECT NAME

**Kalae Street Stormwater Improvements**

#### SCOPE OF WORK

The Project shall be defined as eligible activities funded in whole or in part under this Agreement as follows:

The Project includes upsizing driveway culverts, installation of roadside ditches, construction of a drainage ditch, and associated appurtenances along and/or near Kalae Street.

The general Scope of Work to be performed by SUBRECIPIENT is limited to that which was submitted in the MCWI Application Portal and approved for funding in accordance with the MCWI Program Regulations. SUBRECIPIENT hereby agrees that no additional eligible scope may be added to this Scope of Work without the express written consent of MDEQ. The Scope of Work eligible for reimbursement is limited to that identified as eligible by MDEQ and further described by plans, specifications, contract documents, and contract change orders approved as eligible by MDEQ.

#### PROJECT TIMELINE AND REQUIREMENTS

(1) SUBRECIPIENT agrees to the following schedule.

- a. Within 10 days of execution of this Agreement, SUBRECIPIENT's Authorized Representative, or his/her designee shall watch the video on the MDEQ <https://www.mswaterinfrastructure.com> web-page entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview." The web-page will track compliance with this requirement;
- b. On or about July 24, 2023, submit a complete set of plans, specifications, contract documents on each construction contract, and all applicable permits and agency approvals, if not already submitted to MDEQ;
- c. On or about August 14, 2023, advertise each construction contract for bids;
- d. On or about September 28, 2023, but no later than 45 days after advertisement for construction bids on each construction contract, receive bids;



- e. No later than 60 days after receipt of bids on each construction contract, execute construction contract;
- f. No later than 15 days after execution of construction contract, submit the entire procurement file (including but not limited to the request for proposals, evidence of publication, MBE/WBE documentation, all received bids, evaluation and selection documentation, executed construction contracts, and professional services contracts);
- g. No later than 60 days after execution of each construction contract, execute and submit a copy of the notice to proceed;
- h. No later than 5 business days after the estimated completion of 25% of construction, submit a notice to MDEQ of such milestone;
- i. No later than 5 business days after the estimated completion of 50% of construction, submit a notice to MDEQ of such milestone;
- j. No later than 5 business days after the estimated completion of 75% of construction, submit a notice to MDEQ of such milestone;
- k. No later than 5 business days after completion of each construction contract, notify MDEQ of construction completion;
- l. No later than 30 days after the contract completion date on each construction contract, submit all change orders which include time extensions, or a request and justification for delaying MDEQ's final construction observation;
- m. Within 45 days of Project completion, but no later than September 30, 2026, whichever is earlier, unless an extension of this date is specifically authorized by MDEQ, SUBRECIPIENT must submit the following: Final Report, as listed in Article 11, the engineer's certification of compliance with plans, specifications, and contract documents; final professional services contract amendments, if any; and all other administrative forms and documents required by the Agreement.

(2) To the extent any documents required to be submitted in Attachment A, Article (1) above were submitted with the MCWI Grant Application through the Application Portal, the documents do not need to be resubmitted.

(3) All documents required to be submitted in Attachment A, Article (1) above, shall be uploaded to the Documents Portal at <https://www.mswaterinfrastructure.com>.

**ATTACHMENT B****SYSTEMS AND PROCESSES FOR FINANCIAL MANAGEMENT  
RECOMMENDATIONS AND/OR CORRECTIVE ACTION PLAN**

An evaluation for the assessment of uncontrolled risks of the SUBRECIPIENT's systems and processes for financial management was performed as of part of the initial subaward process by MDEQ, acting on behalf of the State of Mississippi, as administrator of this Subaward Agreement. MDEQ requests the SUBRECIPIENT provide the following information to MDEQ as part of observations made during the evaluation. MDEQ reserves the right to re-evaluate the assessment of uncontrolled risks upon subsequently identified facts:

1. SUBRECIPIENT agrees to provide MDEQ with a copy of their annual audited financial statements within 60 days of the report release date throughout the Period of Performance.
2. SUBRECIPIENT agrees to promptly notify MDEQ of any significant changes made to the SUBRECIPIENT's current policies and procedures that would impact financial management systems and processes, specifically those communicated as part of the evaluation, from which the current residual risk levels were derived.
3. SUBRECIPIENT agrees to promptly notify MDEQ of any level of fraud or abuse discovered within the organization without regard to materiality that is related to the operation of the Project, as well as other pervasive deficiencies identified for grant management practices from any source, both external and internal, throughout the program performance period.
4. If deficiencies, significant deficiencies and/or material weaknesses are reported to the SUBRECIPIENT, as part of any assurance, attestation, or monitoring engagement during the program performance period, SUBRECIPIENT agrees to provide its response(s) and/or corrective action plan(s) to MDEQ so that prompt action can be taken by MDEQ to mitigate any elevated level of uncontrolled risk that could potentially impact MDEQ's or the SUBRECIPIENT's ability to comply with Federal Award and/or subaward requirements.
5. SUBRECIPIENT agrees that MDEQ has the right to perform monitoring procedures as deemed appropriate by MDEQ based on the assessed risk of noncompliance.

## ATTACHMENT C

### SUBAWARD TERMS AND CONDITIONS FOR CONTRACTED PARTIES

#### 1. AUTHORITY TO PARTICIPATE IN THIS AGREEMENT

The Contracted Party certifies that (a) it is either a 1) state agency, 2) a validly organized business that is authorized to do business in the state of Mississippi, 3) a nongovernmental organization, or 4) a political subdivision of the state of Mississippi with valid authority to enter into this agreement and; (b) entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (c) notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

#### 2. DEBARMENT AND SUSPENSION

Contractor/Contracted Parties certifies to the best of its knowledge and belief, that it:

A. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it 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;

C. has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for a 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;

D. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in Article 2.B. and Article 2.C., above; and,

E. has not, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

This agreement is subject to 31 C.F.R. Part 19.

#### 3. INDEMNIFICATION

To the extent allowed by state law, Contracted Party agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and the Department's contractors from and against any and all



claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of any Contracted Party, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

#### 4. RELATIONSHIP STATUS

The Contracted Party acknowledges and agrees that MDEQ is not a party, in any manner whatsoever, to any contract between the SUBRECIPIENT and the construction contractor(s), engineer(s), attorney(s), equipment supplier(s), contractor(s), or between any other parties of any kind whatsoever (hereinafter collectively referred to as "vendor"). The SUBRECIPIENT and Contracted Party also acknowledge and agree that any benefit to vendors contracting with the SUBRECIPIENT or Contracted Parties arising from or associated with this Agreement is strictly incidental and all such vendors are not and are not intended to be considered as third-party beneficiaries under any agreement between MDEQ and the SUBRECIPIENT.

Upon execution of any contract between the SUBRECIPIENT and any other party in regard to the project, MDEQ does not assume any authorities, duties, responsibilities, or liabilities under such contract. The SUBRECIPIENT and Contracted Party shall not have any authority to bind or otherwise obligate MDEQ, directly or indirectly, under any contract or agreement between the SUBRECIPIENT and any other party. The SUBRECIPIENT, Contracted Party and its vendors acknowledge and agree that any action taken by MDEQ in its role of grantor, or in its separate and distinct role as regulator shall not in any way change or alter its position as that of grantor.

MDEQ does not have any authority, duty, responsibility, or liability in contract claims or dispute identification, negotiation, resolution, or any other actions regarding contract claims under the contract(s) between the SUBRECIPIENT and any other party. The SUBRECIPIENT and the Contracted Party acknowledge and agree that MDEQ is not obligated to review, comment on, approve, or discuss the merits of any contract claims presented by or to any party. Any MDEQ reviews, approvals, observations, presence at meetings, written communications, verbal communications or other actions are not to be interpreted as addressing the merits of any claims, nor are they to be construed as interpreting the contract between the SUBRECIPIENT and the Contracted Party or any other parties.

#### 5. ACCESS TO RECORDS

Provided Contracted Party is given reasonable advance written notice and such inspection is made during normal business hours of Contracted Party, then the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contracted Party's books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the Contracted Party's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by Contracted Party for a minimum of ten (10) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the

records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

Contracted Party is not required to retain the above-mentioned records for the ten (10) year period prescribed in this Section and the "Right to Audit" provision only if all of the following conditions are satisfied:

- A. Contracted Party has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;
- B. No audit, litigation or other action arising out of or related in any way to this Project is commenced before Contracted Party provides the records and corresponding certification to MDEQ, in which case, Contracted Party shall retain the records until all issues arising out of the action are finally resolved; and
- C. Contracted Party provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

#### **6. RECORD RETENTION AND RIGHT TO AUDIT**

The Contracted Party shall maintain and retain books, documents, papers, financial records and other records, including electronic records, as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. Contracted Party shall retain these records for a period of ten (10) years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten (10) year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General. If any litigation, claim, investigation, or audit relating to this Agreement or an activity funded under the Agreement is started before the expiration of the ten (10) year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

#### **7. RIGHT TO INSPECT WORK; SITE ACCESS**

MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Upon request by MDEQ, Contracted Party shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to the performance of the Work.

#### **8. CONFLICT OF INTEREST**

The Contracted Party covenants that he presently has no interest and shall not acquire any interest direct or indirect in the Project that is the subject to this Agreement or any parcels therein, where applicable, or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contracted Party further covenants that, in the performance of this agreement, no person having any such interest shall be employed.



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

#### **9. COOPERATION AND EVALUATION**

The Contracted Party agrees to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project(s) to which the Agreement relates, and to provide in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, the Contracted Party agrees to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.



## ATTACHMENT D

### ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

#### ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, SUBRECIPIENT provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to SUBRECIPIENT's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that SUBRECIPIENT may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of SUBRECIPIENT's program(s) and activity(ies), so long as any portion of SUBRECIPIENT's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. SUBRECIPIENT ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. SUBRECIPIENT acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). SUBRECIPIENT understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, SUBRECIPIENT shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. SUBRECIPIENT understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in SUBRECIPIENT's programs, services, and activities.

3. SUBRECIPIENT agrees to consider the need for language services for LEP persons when SUBRECIPIENT develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. SUBRECIPIENT acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon SUBRECIPIENT and SUBRECIPIENT's successors, transferees, and assignees for the period in which such assistance is provided.

5. SUBRECIPIENT understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates SUBRECIPIENT, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates SUBRECIPIENT for the period during which it retains ownership or possession of the property.

6. SUBRECIPIENT shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. SUBRECIPIENT shall comply with information requests, on-site compliance reviews and reporting requirements.

7. SUBRECIPIENT shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. SUBRECIPIENT also must inform the Department of the Treasury if SUBRECIPIENT has received no complaints under Title VI.

8. SUBRECIPIENT must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the SUBRECIPIENT and the administrative agency that made the finding. If SUBRECIPIENT settles a case or matter alleging such discrimination, SUBRECIPIENT must provide documentation of the settlement. If SUBRECIPIENT has not been the subject of any court or administrative agency finding of discrimination, please so state.



**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY  
MISSISSIPPI MUNICIPALITY AND COUNTY WATER INFRASTRUCTURE GRANT**

STATE OF MISSISSIPPI  
COUNTY OF HINDS

MDEQ AGREEMENT NO. 443-2-SW-5.6

**SUBAWARD AGREEMENT**

This document is a Subaward Agreement (this "Agreement") between the Mississippi Department of Environmental Quality ("MDEQ"), a Pass-through entity as defined in 2 C.F.R. § 200.1, and City of Diamondhead, UEI Number: K9M1T71V8JM9 ("SUBRECIPIENT", and together with MDEQ, the "Parties", and each, a "Party") to provide grant funds for the Work conducted under the Mississippi Municipality and County Water Infrastructure ("MCWI") Grant Program (the "Program") as specified in Article 4.

**1. SOURCE OF FUNDS**

The grant funds provided by this Agreement are made available pursuant to the Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131), provided through funds awarded to the State of Mississippi pursuant to the American Rescue Plan Act of 2021 ("ARPA"), Public Law 117-2 (March 11, 2021), provided through the U.S. Department of Treasury pursuant to Federal Award # SLFRP0003 and CFDA No. 21.027 (Coronavirus State and Local Fiscal Recovery Funds) awarded on May 10, 2021, and subsequently to MDEQ through Mississippi Senate Bill 3056, 2022 Regular Session (April 26, 2022) and Mississippi House Bill 1716, 2023 Regular Session (March 22, 2023).

**2. PROJECT**

Under this Agreement, MDEQ agrees to disburse funds to SUBRECIPIENT in accordance with the terms herein to reimburse the costs associated with SUBRECIPIENT's implementation of the project entitled "Kolo Court Ditch Improvements" (the "Project").

**3. PURPOSE**

The purpose of this Project is to make a necessary investment in an upgrade to SUBRECIPIENT's infrastructure. The Project is not for Research and Development.

**4. SCOPE OF WORK**

SUBRECIPIENT shall perform the tasks as described and identified in Attachment A, Scope of Work (the "Work").

**5. TERMS AND CONDITIONS**

SUBRECIPIENT is subject to U.S. Treasury's regulations governing ARPA, and all applicable terms and conditions in 2 C.F.R. Part 200 of the Office of Management and Budget ("OMB") Uniform Guidance for Grants and Cooperative Agreements, as amended, including



Appendix II to Part 200, and all other OMB circulars, executive orders or other federal laws or regulations applicable to the services provided under this Agreement. All of these terms and conditions of this Agreement apply to SUBRECIPIENT and, as applicable, its Contractors/Contracted Parties.

## 6. PERIOD OF PERFORMANCE

The Period of Performance shall commence upon the execution of this Agreement and shall end on **September 30, 2026**. Costs incurred on March 3, 2021, or thereafter, but prior to the commencement of the Period of Performance may be reimbursed provided MDEQ determines such costs are allowable and eligible. SUBRECIPIENT agrees to complete all tasks included in the Scope of Work within this Period of Performance, unless otherwise specified in writing by MDEQ. If, at any time during the Period of Performance of this Agreement, SUBRECIPIENT determines, based on the Work performed to date, that the Work cannot be completed within the Period of Performance, SUBRECIPIENT shall so notify MDEQ immediately in writing.

Failure to adhere to the requirements placed on MCWI funds can result in termination of this Agreement and may result in a demand for repayment by MDEQ. Moreover, if MDEQ is required to return any funds as a result of misspending on the part of SUBRECIPIENT, MDEQ reserves the right to seek and receive repayment of the amount of funds in question.

## 7. CONSIDERATION AND PAYMENT

A. *Project Cost.* The total Project cost shall not exceed **\$240,657.50**, with said amount broken down as follows:

- i. MCWI Grant Funds shall not exceed **\$105,055.05**;
- ii. The Local Fiscal Recovery Funds ("LFRF") received by SUBRECIPIENT from the U.S. Treasury or the Mississippi Department of Finance and Administration used as matching funds in this Agreement shall not exceed **\$105,055.05**;
- iii. Any LFRF transferred to SUBRECIPIENT from a county or municipality ("Transferred LFRF") shall not exceed **\$0.00**;
- iv. Any other funds that SUBRECIPIENT obligates(ed) to the project that are not eligible for MCWI match ("Other Funds") shall not exceed **\$30,547.40**.

B. Professional fees that will be reimbursed with MCWI Grant Funds shall not exceed **\$9,626.30**. This amount is included in, and is not in addition to, the maximum MCWI Grant Funds specified in Article 7.A.i, above and Article 7.C., below.

SUBRECIPIENT understands and acknowledges that the amount of professional fees, as defined in the MCWI Regulations, Rule 1.1 E. (18), that may be matched with MCWI Grant Funds is limited to no more than 4% of the total amount of costs actually incurred on the Project, which in no case may be more than the total Project cost set forth in Article 7.A., above.

C. *Consideration.* As consideration for the performance of the tasks included in this Agreement, MDEQ agrees to reimburse SUBRECIPIENT an amount not to exceed **One Hundred Five Thousand Fifty-Five Dollars and Five Cents (\$105,055.05)** (the "Maximum Amount").

MDEQ is under no obligation to provide funds to SUBRECIPIENT if SUBRECIPIENT has not met, or does not continue to meet, minimum federal requirements to receive funds, such as but not limited to, adhering to applicable procurement requirements found in 2 C.F.R. Part 200 *et al.* Moreover, MDEQ bears no responsibility relative to SUBRECIPIENT's expenditure of its own funds. To that end, in the process of review of documentation for reimbursement, as well as compliance monitoring activities associated with the Program, MDEQ is not responsible or liable for any expenditure made by SUBRECIPIENT with its funds. As such, SUBRECIPIENT is solely responsible for compliance with federal and state requirements associated with its LFRF, its LFRF Transferred Funds, and any other funds it uses towards its Project that are not a part of the MCWI Grant Funds. SUBRECIPIENT must substantiate all expenditures in a compliant manner. MDEQ is under no obligation to reimburse costs incurred that are not demonstrably compliant with federal and state law.

D. *Payment.* Subject to available funding, as set forth in the terms and conditions of this Agreement, MDEQ shall pay all properly invoiced amounts due to SUBRECIPIENT within forty-five (45) days after MDEQ's receipt of such invoice, except for any amounts disputed by MDEQ in good faith. Legislative approval may be required where MDEQ receives any claim of payment from SUBRECIPIENT that includes Work performed outside a one (1) year period from receipt of such invoice.

i. *Request for Payment.* SUBRECIPIENT shall request payment of funds hereunder for Project costs on a reimbursement basis (such requests, "Reimbursement Requests"), unless otherwise directed by MDEQ. SUBRECIPIENT shall submit Reimbursement Requests and supporting documentation of costs incurred as required by MDEQ to the MCWI Reimbursement Portal, located at <https://www.mswaterinfrastructure.com>. All Reimbursement Requests for time periods ending June 30 of any year, during the Period of Performance under this Agreement, shall be submitted no later than July 31 of that same year. Final invoice(s) shall be submitted to MDEQ no later than September 30, 2026. The Reimbursement Request shall include, at a minimum, breakdowns of personnel, position, dates worked, tasks performed, and totals for contract costs, materials, supplies and equipment, included in the Reimbursement Request. SUBRECIPIENT shall make Reimbursement Requests in accordance with the following procedures and subject to the following terms and conditions:

1. SUBRECIPIENT may make Reimbursement Requests no more frequently than once monthly during the Period of Performance of this Agreement.



2. SUBRECIPIENT shall request payment under this Agreement only for the costs necessary to complete the Scope of Work specifically stated and required under this Agreement.

3. SUBRECIPIENT shall not request payment under this Agreement for other services or other work the SUBRECIPIENT or its contractors may provide under any other Subaward or Contract not related to this Project.

4. SUBRECIPIENT shall provide on each Reimbursement Request the amount of its LFRF, Transferred LFRF and Other Funds expended. SUBRECIPIENT shall also provide the amount requested for professional fees. MDEQ will then determine the amount of MCWI Grant Funds that each Reimbursement Request qualifies for within the Program regulations and procedures.

5. SUBRECIPIENT understands that no payment, including final payment, shall be interpreted as acceptance of defective and incomplete Work, and SUBRECIPIENT shall remain responsible for performance in strict compliance with this Agreement. If MDEQ rejects, condemns or fails to approve any part of the Scope of Work, it may issue a Notice to Cure or terminate this Agreement.

6. MDEQ reserves the right to refuse to pay all or any part of the funds requested in a Reimbursement Request for any of the following reasons: 1) at MDEQ's discretion, the costs SUBRECIPIENT is seeking reimbursement for are not reasonable or necessary for the completion of the Work in this Agreement, 2) at MDEQ's discretion, the costs are ineligible for reimbursement under this Project, 3) at the time the request is submitted SUBRECIPIENT has failed to comply with any term or condition of this Agreement, 4) at the time the request is submitted the SUBRECIPIENT has otherwise failed to perform the Work to date in accordance with the Scope of Work, or 5) at the time the request is submitted the SUBRECIPIENT has otherwise failed to comply with applicable state, federal, or local laws and regulations.

ii. *Indirect Cost Rate.* Reimbursement of indirect costs and/or overhead is not allowed under this Agreement.

E. *Limitations on Expenditures.* MDEQ shall reimburse SUBRECIPIENT only for documented expenditures incurred on or after March 3, 2021: (i) reasonable and necessary to carry out the Scope of Work described in Attachment A; (ii) documented by contracts or other evidence of liability and (iii) incurred in accordance with all applicable requirements for the expenditure of funds payable under this Agreement.

F. *Improper Payments.* Any item of expenditure by SUBRECIPIENT under the terms of this Agreement which is found by auditors, investigators, other authorized



representatives of MDEQ, the U.S. Treasury, the Mississippi State Auditor or other federal or state instrumentality to be improper, unallowable, in violation of federal or state law, or the terms of this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of SUBRECIPIENT shall become SUBRECIPIENT's liability, and shall be paid solely by SUBRECIPIENT, immediately upon notification of such, from funds other than those provided by MDEQ under this Agreement. This provision shall survive the expiration or termination of this Agreement.

Any funds that are paid by MDEQ to SUBRECIPIENT that are not necessary for the completion of the Work in this Agreement and/or that are deemed ineligible must be returned to MDEQ immediately upon receiving MDEQ's written notification for return of funds.

G. *Clawback.* If funds are expended improperly or if an expense submitted for reimbursement is disallowed or deemed ineligible under federal, state or local laws and regulations, then payments to SUBRECIPIENT may be subject to clawback by MDEQ, the State of Mississippi or the U.S. Treasury.

#### 8. **AMENDMENTS OR MODIFICATION**

This Agreement may only be amended, modified, or supplemented by written agreement signed by the Parties hereto.

#### 9. **PROGRESS REPORTS**

SUBRECIPIENT shall provide required progress reports during the Period of Performance of this Agreement in a format prescribed by MDEQ. These reports shall be submitted in accordance with the following schedule, which may be amended from time to time:

<u>REPORTING PERIOD</u>	<u>DEADLINE</u>
October – December	January 15
January – March	April 15
April – June	July 15
July – September	October 15

This provision shall survive the expiration or termination of this Agreement with respect to any reports which SUBRECIPIENT is required to submit to MDEQ following the expiration or termination of this Agreement.

#### 10. **FAILURE TO TIMELY PERFORM**

SUBRECIPIENT shall take all reasonable measures to ensure MCWI Grant Funds and LFRF used for MCWI matching funds are obligated by 11:59 p.m. on August 30, 2024. SUBRECIPIENT acknowledges and agrees that its failure to obligate MCWI Grant Funds and

LFRF used for MCWI matching funds by 11:59 p.m. on August 30, 2024, may result in MDEQ modifying the MCWI Grant Funds awarded or terminating this Agreement.

If SUBRECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof authorized by MDEQ or if SUBRECIPIENT otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUBRECIPIENT in writing of the delay or nonperformance. If such delay or nonperformance is not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may terminate SUBRECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to perform properly.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUBRECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUBRECIPIENT in which the State has an interest.

#### 11. **FINAL PAYMENT AND REPORT**

When SUBRECIPIENT has performed all the Work, SUBRECIPIENT shall transmit to MDEQ a comprehensive report on the Work in a format prescribed by MDEQ (the "Final Report"). The Final Report shall be provided by SUBRECIPIENT to MDEQ within forty-five (45) days of Project completion in a format prescribed by MDEQ. Upon acceptance of Final Report, MDEQ will process final Reimbursement Request.

Upon satisfactory completion of the Work performed under this Agreement, as a condition before final payment under this Agreement or as a termination settlement under this Agreement, SUBRECIPIENT shall certify to MDEQ, on a form provided by MDEQ, that the final payment amount is the remaining amount that SUBRECIPIENT is owed under this Agreement and that no additional payment for its Work under this Project will be submitted for reimbursement. Unless otherwise provided in the Agreement, by state law or otherwise expressly agreed to by the Parties in this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of MDEQ's claims against SUBRECIPIENT or its sureties under this Agreement.

In consideration of the execution of this Agreement by MDEQ, SUBRECIPIENT agrees that acceptance of final payment from MDEQ will constitute an agreement by SUBRECIPIENT to release and forever discharge MDEQ, its agents, employees, officers, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which SUBRECIPIENT has at the time of acceptance of final payment or may thereafter have, arising out of, in connection with or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this Agreement.

#### 12. **FINANCIAL MANAGEMENT AND COMPLIANCE**

MDEQ requires that SUBRECIPIENT have in place, prior to the receipt of funds, a financial management system that will be able to isolate and trace every dollar funded under this Agreement from receipt to expenditure and have on file appropriate support documentation for each transaction. Examples of documentation include but are not limited to copies of checks paid



to vendors, vendor invoices, bills of lading, purchase vouchers, payrolls, bank statements and reconciliations, and real property and easement appraisals. Prior to the submittal of any such documentation to MDEQ, SUBRECIPIENT shall redact, in accordance with the definition of "Protected Personally Identifiable Information" ("Protected PII") as defined in 2 C.F.R. § 200.1, all information reflecting an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII as defined in 2 C.F.R. § 200.1 that is required by law to be disclosed. SUBRECIPIENT and any Contracted Parties (as such term is defined in Article 13 of this Agreement) are limited to the travel rates of the State of Mississippi, including dining and hotels, in place at the time of the expenditure for which reimbursement is sought; and SUBRECIPIENT shall audit any such invoice for same, clearly indicating the actual expense and the adjustment, if any.

SUBRECIPIENT certifies that all information provided to MDEQ or its representatives as part of the initial risk assessment for this Work is complete and accurate. SUBRECIPIENT agrees to submit to and cooperate with MDEQ in any additional risk assessment evaluation and periodic audit procedures to ensure adequate financial management of all funds. Further, SUBRECIPIENT shall continue to implement any recommendations and/or corrective action plan set forth in the report transmitted to SUBRECIPIENT based on the findings of the systems and processes for financial management, a copy of which is attached hereto as Attachment B and incorporated herein in its entirety.

### 13. CONTRACTS

SUBRECIPIENT shall be responsible for accountability of funds, compliance with Project specifications, and Project management by its contractors. MDEQ shall not bear responsibility for any liability caused or incurred by any contractor in performing Work. MDEQ shall not be deemed by virtue of this Agreement to have any contractual obligation to, or relationship with, any of SUBRECIPIENT's contractors, and the Parties agree and acknowledge that, as between MDEQ and SUBRECIPIENT, all Work shall be deemed to be the responsibility of, and performed by, SUBRECIPIENT. No contractor or other recipient of funds from MDEQ under this Agreement shall be deemed to be an agent, representative, employee or servant of MDEQ in connection with this Agreement. The parties with whom contracts or subaward agreements are entered into by the SUBRECIPIENT shall be referred to herein as "Contractor", "Contracted Party", or "Contracted Parties". In addition to ensuring that its Contracted Parties follow the applicable terms in this Agreement, SUBRECIPIENT shall require all terms and conditions set forth in Attachments A and C attached hereto to be included in all agreements between the SUBRECIPIENT and Contracted Parties, and in all agreements between Contracted Parties and Contracted Parties' contractors/sub-contractors.

### 14. APPLICABLE LAW

The Agreement shall be governed by and construed in accordance with the laws and regulations of the State of Mississippi and applicable federal law excluding, its conflict of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State.



SUBRECIPIENT shall comply with applicable federal, state, and local laws and regulations, including, but not limited to, the following:

A. *Authorizing Statutes.* Section 603 of the Social Security Act (42 U.S.C. § 803), as added by section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) and the Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131).

B. *Implementing Regulations.* Subpart A of 31 C.F.R. Part 35 (Coronavirus State and Local Fiscal Recovery Funds), as adopted in the Coronavirus State and Local Fiscal Recovery Funds interim final rule (86 Fed. Reg. 26786, applicable May 17, 2021 through March 31, 2022) and final rule (87 Fed. Reg. 4338, applicable January 27, 2022 through the end of the ARP/CSLFRF award term), and other subsequent regulations implementing Section 603 of the Social Security Act (42 U.S.C. § 803), as well as MDEQ regulations, entitled “Mississippi Commission on Environmental Quality Regulations for the Mississippi Municipality and County Water Infrastructure Grant Program.”

C. *Guidance Documents.* Applicable guidance documents issued from time-to-time by the US Department of Treasury and MDEQ, including the currently applicable version of the *Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds*.<sup>1</sup>

D. *Licenses, Certifications, Permits, Accreditation.* SUBRECIPIENT shall obtain and keep current any license, certification, permit, or accreditation required by federal, state, or local law and shall submit to MDEQ proof of any licensure, certification, permit or accreditation upon request.

## 15. **AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of MDEQ to proceed under this Agreement is conditioned upon the availability of the funds from state, federal, and/or other funding sources. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or 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 MDEQ, MDEQ shall have the right upon ten (10) working days written notice to the SUBRECIPIENT, to terminate this Agreement without damage, penalty, cost or expenses to MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

## 16. **REPRESENTATION REGARDING CONTINGENT FEES**

SUBRECIPIENT represents that it has not retained a person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

<sup>1</sup> <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

## 17. REPRESENTATION REGARDING GRATUITIES

SUBRECIPIENT represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* and Section 9.105 (Gratuities) of the Mississippi Procurement Manual.

## 18. UNIFORM ADMINISTRATIVE REQUIREMENTS

SUBRECIPIENT shall comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 2 C.F.R. Part 200 (“UG”), as adopted by the Department of Treasury at 2 C.F.R. Part 1000 and as set forth in the Assistance Listing for ARP/CSLFRF (21.027). These requirements dictate how SUBRECIPIENT must administer the Subaward and how MDEQ must oversee SUBRECIPIENT. As a condition of receipt of the grant funds authorized in this Agreement, SUBRECIPIENT agrees to watch the video entitled “American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview” found at <https://www.mswaterinfrastructure.com>.

The applicable UG provisions are as follows:

- Subpart A, Acronyms and Definitions;
- Subpart B, General Provisions;
- Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards (except 2 C.F.R. §§ 200.204, .205, .210, and .213);
- Subpart D, Post Federal Award Requirements (except 2 C.F.R. §§ 200.305(b)(8) and (9), .308, .309, and .320(c)(4));
- Subpart E, Cost Principles;
- Subpart F, Audit Requirements;
- 2 C.F.R. Part 25 (Universal Identifier and System for Award Management);
- 2 C.F.R. Part 170 (Reporting Subaward and Executive Compensation Information); and
- 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)).

SUBRECIPIENT shall document compliance with UG requirements, including adoption and implementation of all required policies and procedures, within thirty (30) days of the execution of this Agreement and during all subsequent reviews during the term of the Agreement. It is SUBRECIPIENT’s responsibility to comply with all UG requirements. Failure to do so may result in termination of the Agreement by MDEQ.

All real property acquired or improved, and equipment or supplies purchased in whole or in part with MCWI Grant Funds and/or LFRF, must be used, insured, managed, and disposed of in accordance with 2 C.F.R. § 200.311 through 2 C.F.R. § 200.316.



## 19. SUBAWARDS

If SUBRECIPIENT is authorized by MDEQ to make a Subaward, SUBRECIPIENT must include and incorporate the terms and conditions of this Agreement and any attachments, in all lower tier Subawards. Further, SUBRECIPIENT, who makes a Subaward, must follow and carry out all the responsibilities of a Pass-through entity described at 2 C.F.R. Part 200.

## 20. COMPLIANCE WITH LAWS

SUBRECIPIENT understands that MDEQ is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and SUBRECIPIENT agrees during the Period of Performance of the Agreement that SUBRECIPIENT will strictly adhere to this policy in its employment practices and work performance under this Agreement. SUBRECIPIENT shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified.

SUBRECIPIENT along with any sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d *et seq.*, as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement. Further, SUBRECIPIENT agrees to comply with the provisions of Attachment D to this Agreement.

Nothing contained in this Agreement may be deemed or construed in any way to stop, limit, or impair MDEQ from exercising or performing any regulatory, legislative, governmental, or other powers or functions.

SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under ARPA, including the information provided by the State and Local Fiscal Recovery Fund Final Rule.<sup>2</sup>

SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under the Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131).<sup>3</sup>

<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>

<sup>3</sup> <http://billstatus.ls.state.ms.us/documents/2023/pdf/SB/2400-2499/SB2444SG.pdf>



SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under the Regulations promulgated by MDEQ.<sup>4</sup>

## 21. STOP WORK ORDER

A. *Order to Stop Work:* MDEQ may, by written order to SUBRECIPIENT at any time and without notice to any surety, require SUBRECIPIENT to stop all or any part of the Work called for by this Agreement. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to SUBRECIPIENT, 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, SUBRECIPIENT shall forthwith comply with its terms and take all reasonable 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, MDEQ shall either:

- i. cancel the stop work order; or
- ii. terminate the Work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this Agreement.

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, SUBRECIPIENT shall have the right to resume Work. An appropriate adjustment may be made in the Period of Performance or Maximum Amount, or both, and the Agreement shall be modified in writing accordingly if:

- i. The stop work order results in an increase in the time required for, or in SUBRECIPIENT's cost properly allocable to, the performance of any part of this Agreement; and
- ii. SUBRECIPIENT provides a written claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that MDEQ decides that the facts justify such action and any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

C. *Termination of Stopped Work:* If a stop work order is not canceled and the Work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order may be allowed by adjustment or otherwise.

## 22. E-PAYMENT

SUBRECIPIENT agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. MDEQ agrees to make payment in

<sup>4</sup> <https://mswaterinfrastructure.com/wp-content/uploads/2022/07/MCWI-Grant-Program-Regulations-revised-12-16-22.pdf>

accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305.

### 23. INTERVENTIONS

If MDEQ determines that SUBRECIPIENT is not in compliance with this Agreement, MDEQ may initiate an intervention, in accordance with 2 C.F.R. § 200.208 and 2 C.F.R. § 200.339. The degree of SUBRECIPIENT’s performance or compliance deficiency will determine the degree of intervention. All possible interventions are listed below and will depend on the degree of deficiency in SUBRECIPIENT’s performance or compliance deficiency.

If MDEQ determines that an intervention is warranted, it shall provide written notice to SUBRECIPIENT of the intervention within thirty (30) days of the completion of a report review, desk review, onsite review, audit review, or procedures engagement review, or as soon as possible after MDEQ otherwise learns of a compliance or performance deficiency related to the execution of this Agreement. The written notice shall notify SUBRECIPIENT of the following related to the intervention:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the action needed to remove the additional requirement, if applicable;
- (4) The time allowed for completing the actions if applicable; and
- (5) The method for requesting reconsideration of the additional requirements imposed.

MDEQ may impose, but is not limited to, the following interventions on SUBRECIPIENT, based on the level of the compliance or performance deficiency that MDEQ determines:

**Level 1 Interventions.** These interventions may be required for minor compliance or performance issues:

- (1) SUBRECIPIENT addresses specific internal control, documentation, financial management, compliance, or performance issues within a specified time period; and/or
- (2) More frequent or more thorough reporting by the SUBRECIPIENT; and/or
- (3) More frequent monitoring by MDEQ; and/or
- (4) Required SUBRECIPIENT technical assistance or training.

**Level 2 Interventions.** These interventions may be required for more serious compliance or performance issues:

- (1) Restrictions on funding payment requests by SUBRECIPIENT; and/or
- (2) Disallowing payments to SUBRECIPIENT; and/or
- (3) Requiring repayment for disallowed cost items; and/or
- (4) Imposing probationary status on SUBRECIPIENT.

**Level 3 Interventions.** These interventions may be required for significant and/or persistent compliance or performance issues:



- (1) Temporary or indefinite funding suspension to SUBRECIPIENT; and/or
- (2) Nonrenewal of funding to SUBRECIPIENT in subsequent year; and/or
- (3) Terminate funding to SUBRECIPIENT in the current year; and/or
- (4) Initiate legal action against SUBRECIPIENT.

Interventions will remain in place until the underlying performance or compliance deficiency is addressed to the sole satisfaction of MDEQ.

#### 24. **E-VERIFICATION**

If applicable, SUBRECIPIENT represents and certifies that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1, *et seq.* The term “employee” as used herein means any person that is hired to perform work within the State. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. SUBRECIPIENT agrees to maintain records of such compliance. Upon request of the State of Mississippi and after approval of the Social Security Administration or Department of Homeland Security, when required, SUBRECIPIENT agrees to provide a copy of each such verification. SUBRECIPIENT further represents and certifies that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws.

#### 25. **TRANSPARENCY**

This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983” and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this Agreement is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Agreement may be posted to the Department of Finance and Administration’s independent agency Agreement website for public access at <https://www.transparency.mississippi.gov>. Information identified by SUBRECIPIENT as trade secrets or other proprietary information, including confidential vendor information, or any other information which is required to be confidential by state or federal law or outside the applicable freedom of information statutes will be redacted.

#### 26. **PAYMODE**

Payments by state agencies using the statewide accounting system shall be made and remittance information provided electronically as directed by MDEQ. These payments shall be deposited into the bank account of SUBRECIPIENT’s choice. MDEQ may, at its sole discretion, require SUBRECIPIENT to submit invoices and supporting documentation electronically at any time during the Period of Performance of this Agreement. SUBRECIPIENT understands and



agrees that MDEQ is exempt from the payment of taxes. All payments shall be in United States currency.

## 27. **TERMINATION**

The Agreement may be terminated as follows:

### A. *Termination For Convenience.*

The MDEQ may, when the interests of the State so require, terminate this Agreement in whole or in part, for the convenience of the State. MDEQ shall give written notice of the termination to SUBRECIPIENT specifying the part of the Agreement terminated and when termination becomes effective.

### B. *Termination For Default.*

If SUBRECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof or otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUBRECIPIENT in writing of the delay or nonperformance, and if not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may terminate SUBRECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUBRECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUBRECIPIENT in which the State has an interest.

### C. *Termination Upon Bankruptcy.*

This Agreement may be terminated in whole or in part by MDEQ upon written notice to SUBRECIPIENT, if SUBRECIPIENT should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by SUBRECIPIENT of an assignment for the benefit of its creditors. In the event of such termination, SUBRECIPIENT shall be entitled to recover just and equitable compensation for satisfactory Work performed under this Agreement, but in no case shall said compensation exceed the total Maximum Amount.

## 28. **DISPUTES**

Before pleading to any judicial system at any level, SUBRECIPIENT must exhaust all administrative remedies. A written complaint must first be sent to the Executive Director of MDEQ. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to SUBRECIPIENT within fourteen (14) days after receipt of information

requested by MDEQ or the Executive Director. If the decision of the Executive Director does not resolve the matter, successive administrative remedies may, at SUBRECIPIENT's option, include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Miss. Code Ann. §§ 49-17-35 and -41. In the alternative, at SUBRECIPIENT's option, the decision of the Executive Director may be deemed the final agency action on the complaint. Appeals from the decision of the Executive Director or the Commission shall follow procedures outlined in Miss. Code Ann. § 49-17-41.

29. **ANTI-ASSIGNMENT/CONTRACTING**

SUBRECIPIENT shall not assign, contract, or otherwise transfer this Agreement, in whole or in part without the prior written consent of MDEQ, which MDEQ may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MDEQ of any contract shall be deemed in any way to provide for the incurrence of any obligation of MDEQ in excess of the Maximum MCWI Grant Fund amount set forth in this Agreement, nor create any contractual relationship between MDEQ and any Contracted Parties. Contracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that MDEQ may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the Parties.

30. **AUTHORITY TO PARTICIPATE IN THIS AGREEMENT**

SUBRECIPIENT certifies and acknowledges it is a Mississippi county, municipality or public utility, as defined in MCWI regulation, Rule 1.1. E. (17), and that it has LFRF to use as match funding for this grant. SUBRECIPIENT further certifies and acknowledges that its entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

31. **DEBARMENT AND SUSPENSION**

SUBRECIPIENT certifies to the best of its knowledge and belief, that it, and its Contracted Parties:

A. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. have not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it 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 Agreement or Contract under a public transaction;

C. have not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for a 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;

D. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in Article 31. B. and Article 31. C., above; and

E. have not, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

### 32. **FAILURE TO ENFORCE**

Failure by MDEQ, at any time, to enforce the provisions of this Agreement shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of this Agreement or any part thereof or the right of MDEQ to enforce any provision at any time in accordance with its terms.

### 33. **INDEMNIFICATION**

SUBRECIPIENT agrees to maintain responsibility for the Project and agrees to provide proper operation and maintenance of all facilities for the life of the Project. SUBRECIPIENT's tort liability, if it is an entity of the State of Mississippi, is determined and controlled in accordance with Miss. Code Ann. §§ 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering this liability or of eliminating any defense available to the State under statute.

To the extent allowed by state law, SUBRECIPIENT agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and MDEQ's contractors from and against any and all claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of SUBRECIPIENT, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

### 34. **SUBRECIPIENT STATUS**

SUBRECIPIENT shall, during the entire Period of Performance of this Agreement, be construed to be an independent SUBRECIPIENT. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship or a joint venture relationship.

SUBRECIPIENT represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who are qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of MDEQ.

Any person assigned by SUBRECIPIENT to perform the services hereunder shall be an employee or independent contractor of SUBRECIPIENT, who shall have the sole right to hire and discharge its employees and/or independent contractors under this Agreement.



SUBRECIPIENT shall pay, when due, all salaries and wages of its employees and accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. This provision is solely for the benefit of MDEQ, and nothing herein shall be construed to create or impose any contractual or agency relationship between MDEQ and SUBRECIPIENT'S contractors, subcontractors, employees or agents.

35. **INSURANCE**

SUBRECIPIENT and its Contracted Parties agree to and shall maintain insurance that is required by applicable state, federal, and local laws and regulations.

36. **ENTIRE AGREEMENT**

This Agreement, including all attachments, represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This Agreement may be altered, amended, or modified only by a written document executed by MDEQ and SUBRECIPIENT. SUBRECIPIENT acknowledges that it has thoroughly read this Agreement and all its attachments and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein.

37. **ORAL STATEMENTS**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. All modifications to the Agreement must be made in writing by the MDEQ and agreed to by SUBRECIPIENT.

38. **RECORD RETENTION AND ACCESS TO RECORDS**

Provided SUBRECIPIENT is given reasonable advance written notice and such inspection is made during normal business hours of SUBRECIPIENT, the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of SUBRECIPIENT's books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the SUBRECIPIENT's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by SUBRECIPIENT for a minimum of ten (10) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

SUBRECIPIENT is not required to retain the above-mentioned records for the ten-year period prescribed in this Article and Article 39 only if all of the following conditions are satisfied:

A. SUBRECIPIENT has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;

B. No audit, litigation or other action arising out of or related in any way to this Project is commenced before SUBRECIPIENT provides the records and corresponding certification to MDEQ, in which case, SUBRECIPIENT shall retain the records until all issues arising out of the action are finally resolved; and

C. SUBRECIPIENT provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

39. **RIGHT TO AUDIT**

SUBRECIPIENT shall maintain all financial records, including electronic financial records, as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. SUBRECIPIENT shall retain these records for a period of ten (10) years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten (10) year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General. If any litigation, claim, investigation, or audit relating to this Agreement or an activity funded under the Agreement is started before the expiration of the ten (10) year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

40. **RIGHT TO INSPECT WORK; ACCESS**

MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Notwithstanding any review or inspection by MDEQ and their representatives, invitees, and consultants, SUBRECIPIENT shall not be relieved of its responsibility for performance of the Work or the submission of reports as expressly set forth in this Agreement solely by virtue of such inspection or review of the Work. SUBRECIPIENT shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to SUBRECIPIENT's performance of the Work.

41. **SEVERABILITY**

If any part of this Agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the Parties shall amend the Agreement as necessary to reflect the original intent of the Parties and to bring any invalid or unenforceable provisions in compliance with applicable law.



42. **THIRD PARTY ACTION NOTIFICATION**

SUBRECIPIENT shall give the MDEQ prompt notice in writing of any action or suit filed, and prompt notice of any claim made against SUBRECIPIENT by any entity that may result in litigation related in any way to this Agreement.

43. **CERTIFICATIONS**

SUBRECIPIENT's execution of this Agreement shall be deemed as acknowledgement, guarantee and certification by SUBRECIPIENT of the following:

A. SUBRECIPIENT has sufficient LFRF in its possession that it will use to match MCWI Grant Funds.

B. SUBRECIPIENT will follow and abide by all ARPA guidelines, guidance, rules, regulations, and other criteria, as may be amended from time to time, by the U.S. Treasury regarding the use of monies under this Agreement.

C. As required in Attachment A, Article (1) a., SUBRECIPIENT's Authorized Representative, or his/her designee has watched the video on the MDEQ <https://www.mswaterinfrastructure.com> web-page entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview."

D. All of SUBRECIPIENT's LFRF used as MCWI matching funds, as well as MCWI Grant Funds received by SUBRECIPIENT, have been or will be used for the Project detailed in this Agreement.

E. Upon request by MDEQ, SUBRECIPIENT will provide an Intergovernmental Review Certification as detailed in the MCWI Regulations.

F. SUBRECIPIENT will obligate all MCWI Grant Funds and LFRF funds used for MCWI matching funds by 11:59 p.m. on August 30, 2024.

G. If SUBRECIPIENT does not complete the Project by December 31, 2026, SUBRECIPIENT acknowledges and agrees to complete the Project with other funds.

44. **WAIVER**

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



45. **COMPLIANCE WITH MISS. CODE ANN. § 31-5-37**

If applicable, SUBRECIPIENT shall ensure that Contracted Parties and bidders solicited for contract awards pursuant to this Agreement comply with the requirements of Miss. Code. Ann. § 31-5-37. SUBRECIPIENT shall require all bidders for any contract of Five Thousand Dollars (\$5,000.00) or more procured or to be procured with funds received pursuant to this Agreement to submit a certification with their bid that said bidder will comply with the provisions of Miss. Code. Ann. § 31-5-37. In addition, within seven (7) days of any such contract award procured or to be procured with funds received pursuant to this Agreement, SUBRECIPIENT shall require the Contracted Party to submit to both SUBRECIPIENT and the Mississippi Department of Employment Security ("MDES") an employment plan which conforms to the requirements contained in Miss. Code. Ann. § 31-5-37(2).

From the date written notice of any such contract award is received and until ten (10) business days after the receipt of the employment plan by MDES, the Contracted Party and any subcontractors shall not hire any personnel to fill vacant positions for the project except residents of the State of Mississippi who are to be verified by MDES and/or those qualified individuals who are submitted by MDES. However, the Contracting Party or contractor is authorized to employ Mississippi residents to begin work immediately if such persons are verified by MDES after employment by the Contracting Party or contractor. SUBRECIPIENT shall vacate the contract award in the event the Contracting Party fails to comply with the provisions of Miss. Code Ann. § 31-5-37.

46. **CONFLICT OF INTEREST**

SUBRECIPIENT shall immediately notify MDEQ in writing of any potential conflict of interest resulting from the representation of or service to other clients or otherwise affecting this Agreement in any way. If any such conflict occurs before it is discovered, SUBRECIPIENT shall notify MDEQ of such conflict within five (5) working days of such discovery. If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this Agreement per the "Termination for Convenience" clause.

47. **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and permitted assigns.

48. **NO THIRD-PARTY BENEFICIARIES**

This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

49. **EVALUATION**

SUBRECIPIENT agrees to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project(s) to which the Agreement relates, and to provide

in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, SUBRECIPIENT agrees to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.

50. **VENUE**

Venue for the resolution of any dispute, according to Article 28 of this Agreement, shall be before the Mississippi Commission on Environmental Quality if pursuing an administrative appeal, and venue for any subsequent litigation shall be in the Chancery Court of Hinds County, Mississippi.

51. **HEADINGS**

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

52. **NOTICES**

Unless otherwise specified in the Agreement, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of document(s) (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this subsection):

If to MDEQ:

Attention:  
MCWI Contract Administration  
515 East Amite Street  
P.O. Box 2249  
Jackson, MS 39201  
E-mail: MCWIdocuments@mdeq.ms.gov

If to SUBRECIPIENT:

Attention:  
Jon McCraw  
5000 Diamondhead Circle  
Diamondhead, MS 39525  
Phone: (228) 222-4626  
E-mail: jmccraw@diamondhead.ms.gov

53. **COUNTERPARTS**

Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]



For the faithful performance and consideration provided under the terms of this Agreement, the Parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
Chris Wells  
Executive Director

\_\_\_\_\_  
Date

**CITY OF DIAMONDHEAD**

\_\_\_\_\_  
Mayor Nancy Depreo  
Signature of Authorized Representative

\_\_\_\_\_  
Nancy Depreo  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## ATTACHMENT A

### PROJECT NAME, SCOPE OF WORK AND PROJECT TIMELINE AND REQUIREMENTS

#### PROJECT NAME

**Kolo Court Ditch Improvements**

#### SCOPE OF WORK

The Project shall be defined as eligible activities funded in whole or in part under this Agreement as follows:

The Project includes removal and replacement of an existing concrete drainage culvert at Bayou Drive, installation of grouted rip rap along Kolo Court Ditch, and associated appurtenances.

The general Scope of Work to be performed by SUBRECIPIENT is limited to that which was submitted in the MCWI Application Portal and approved for funding in accordance with the MCWI Program Regulations. SUBRECIPIENT hereby agrees that no additional eligible scope may be added to this Scope of Work without the express written consent of MDEQ. The Scope of Work eligible for reimbursement is limited to that identified as eligible by MDEQ and further described by plans, specifications, contract documents, and contract change orders approved as eligible by MDEQ.

#### PROJECT TIMELINE AND REQUIREMENTS

(1) SUBRECIPIENT agrees to the following schedule.

- a. Within 10 days of execution of this Agreement, SUBRECIPIENT's Authorized Representative, or his/her designee shall watch the video on the MDEQ <https://www.mswaterinfrastructure.com> web-page entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview." The web-page will track compliance with this requirement;
- b. Within 15 days of execution of this Agreement, submit a complete set of plans, specifications, contract documents on each construction contract, and all applicable permits and agency approvals, if not already submitted to MDEQ;
- c. Within 15 days of execution of this Agreement, advertise each construction contract for bids, if not already advertised;

- d. No later than 45 days after advertisement for construction bids on each construction contract, receive bids;
- e. No later than 60 days after receipt of bids on each construction contract, execute construction contract;
- f. No later than 15 days after execution of construction contract, submit the entire procurement file (including but not limited to the request for proposals, evidence of publication, MBE/WBE documentation, all received bids, evaluation and selection documentation, executed construction contracts, and professional services contracts);
- g. No later than 60 days after execution of each construction contract, execute and submit a copy of the notice to proceed;
- h. No later than 5 business days after the estimated completion of 25% of construction, submit a notice to MDEQ of such milestone;
- i. No later than 5 business days after the estimated completion of 50% of construction, submit a notice to MDEQ of such milestone;
- j. No later than 5 business days after the estimated completion of 75% of construction, submit a notice to MDEQ of such milestone;
- k. No later than 5 business days after completion of each construction contract, notify MDEQ of construction completion;
- l. No later than 30 days after the contract completion date on each construction contract, submit all change orders which include time extensions, or a request and justification for delaying MDEQ's final construction observation;
- m. Within 45 days of Project completion, but no later than September 30, 2026, whichever is earlier, unless an extension of this date is specifically authorized by MDEQ, SUBRECIPIENT must submit the following: Final Report, as listed in Article 11, the engineer's certification of compliance with plans, specifications, and contract documents; final professional services contract amendments, if any; and all other administrative forms and documents required by the Agreement.

(2) To the extent any documents required to be submitted in Attachment A, Article (1) above were submitted with the MCWI Grant Application through the Application Portal, the documents do not need to be resubmitted.

(3) All documents required to be submitted in Attachment A, Article (1) above, shall be uploaded to the Documents Portal at <https://www.mswaterinfrastructure.com>.



**ATTACHMENT B****SYSTEMS AND PROCESSES FOR FINANCIAL MANAGEMENT  
RECOMMENDATIONS AND/OR CORRECTIVE ACTION PLAN**

An evaluation for the assessment of uncontrolled risks of the SUBRECIPIENT's systems and processes for financial management was performed as of part of the initial subaward process by MDEQ, acting on behalf of the State of Mississippi, as administrator of this Subaward Agreement. MDEQ requests the SUBRECIPIENT provide the following information to MDEQ as part of observations made during the evaluation. MDEQ reserves the right to re-evaluate the assessment of uncontrolled risks upon subsequently identified facts:

1. SUBRECIPIENT agrees to provide MDEQ with a copy of their annual audited financial statements within 60 days of the report release date throughout the Period of Performance.
2. SUBRECIPIENT agrees to promptly notify MDEQ of any significant changes made to the SUBRECIPIENT's current policies and procedures that would impact financial management systems and processes, specifically those communicated as part of the evaluation, from which the current residual risk levels were derived.
3. SUBRECIPIENT agrees to promptly notify MDEQ of any level of fraud or abuse discovered within the organization without regard to materiality that is related to the operation of the Project, as well as other pervasive deficiencies identified for grant management practices from any source, both external and internal, throughout the program performance period.
4. If deficiencies, significant deficiencies and/or material weaknesses are reported to the SUBRECIPIENT, as part of any assurance, attestation, or monitoring engagement during the program performance period, SUBRECIPIENT agrees to provide its response(s) and/or corrective action plan(s) to MDEQ so that prompt action can be taken by MDEQ to mitigate any elevated level of uncontrolled risk that could potentially impact MDEQ's or the SUBRECIPIENT's ability to comply with Federal Award and/or subaward requirements.
5. SUBRECIPIENT agrees that MDEQ has the right to perform monitoring procedures as deemed appropriate by MDEQ based on the assessed risk of noncompliance.

## ATTACHMENT C

### SUBAWARD TERMS AND CONDITIONS FOR CONTRACTED PARTIES

#### 1. AUTHORITY TO PARTICIPATE IN THIS AGREEMENT

The Contracted Party certifies that (a) it is either a 1) state agency, 2) a validly organized business that is authorized to do business in the state of Mississippi, 3) a nongovernmental organization, or 4) a political subdivision of the state of Mississippi with valid authority to enter into this agreement and; (b) entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (c) notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

#### 2. DEBARMENT AND SUSPENSION

Contractor/Contracted Parties certifies to the best of its knowledge and belief, that it:

A. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it 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;

C. has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for a 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;

D. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in Article 2.B. and Article 2.C., above; and,

E. has not, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

This agreement is subject to 31 C.F.R. Part 19.

#### 3. INDEMNIFICATION

To the extent allowed by state law, Contracted Party agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and the Department's contractors from and against any and all



claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of any Contracted Party, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

#### 4. **RELATIONSHIP STATUS**

The Contracted Party acknowledges and agrees that MDEQ is not a party, in any manner whatsoever, to any contract between the SUBRECIPIENT and the construction contractor(s), engineer(s), attorney(s), equipment supplier(s), contractor(s), or between any other parties of any kind whatsoever (hereinafter collectively referred to as "vendor"). The SUBRECIPIENT and Contracted Party also acknowledge and agree that any benefit to vendors contracting with the SUBRECIPIENT or Contracted Parties arising from or associated with this Agreement is strictly incidental and all such vendors are not and are not intended to be considered as third-party beneficiaries under any agreement between MDEQ and the SUBRECIPIENT.

Upon execution of any contract between the SUBRECIPIENT and any other party in regard to the project, MDEQ does not assume any authorities, duties, responsibilities, or liabilities under such contract. The SUBRECIPIENT and Contracted Party shall not have any authority to bind or otherwise obligate MDEQ, directly or indirectly, under any contract or agreement between the SUBRECIPIENT and any other party. The SUBRECIPIENT, Contracted Party and its vendors acknowledge and agree that any action taken by MDEQ in its role of grantor, or in its separate and distinct role as regulator shall not in any way change or alter its position as that of grantor.

MDEQ does not have any authority, duty, responsibility, or liability in contract claims or dispute identification, negotiation, resolution, or any other actions regarding contract claims under the contract(s) between the SUBRECIPIENT and any other party. The SUBRECIPIENT and the Contracted Party acknowledge and agree that MDEQ is not obligated to review, comment on, approve, or discuss the merits of any contract claims presented by or to any party. Any MDEQ reviews, approvals, observations, presence at meetings, written communications, verbal communications or other actions are not to be interpreted as addressing the merits of any claims, nor are they to be construed as interpreting the contract between the SUBRECIPIENT and the Contracted Party or any other parties.

#### 5. **ACCESS TO RECORDS**

Provided Contracted Party is given reasonable advance written notice and such inspection is made during normal business hours of Contracted Party, then the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contracted Party's books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the Contracted Party's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by Contracted Party for a minimum of ten (10) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the



records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

Contracted Party is not required to retain the above-mentioned records for the ten (10) year period prescribed in this Section and the "Right to Audit" provision only if all of the following conditions are satisfied:

- A. Contracted Party has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;
- B. No audit, litigation or other action arising out of or related in any way to this Project is commenced before Contracted Party provides the records and corresponding certification to MDEQ, in which case, Contracted Party shall retain the records until all issues arising out of the action are finally resolved; and
- C. Contracted Party provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

#### **6. RECORD RETENTION AND RIGHT TO AUDIT**

The Contracted Party shall maintain and retain books, documents, papers, financial records and other records, including electronic records, as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. Contracted Party shall retain these records for a period of ten (10) years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten (10) year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General. If any litigation, claim, investigation, or audit relating to this Agreement or an activity funded under the Agreement is started before the expiration of the ten (10) year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

#### **7. RIGHT TO INSPECT WORK; SITE ACCESS**

MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Upon request by MDEQ, Contracted Party shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to the performance of the Work.

#### **8. CONFLICT OF INTEREST**

The Contracted Party covenants that he presently has no interest and shall not acquire any interest direct or indirect in the Project that is the subject to this Agreement or any parcels therein, where applicable, or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contracted Party further covenants that, in the performance of this agreement, no person having any such interest shall be employed.

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

#### **9. COOPERATION AND EVALUATION**

The Contracted Party agrees to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project(s) to which the Agreement relates, and to provide in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, the Contracted Party agrees to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.

## ATTACHMENT D

### ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

#### ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, SUBRECIPIENT provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to SUBRECIPIENT's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that SUBRECIPIENT may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of SUBRECIPIENT's program(s) and activity(ies), so long as any portion of SUBRECIPIENT's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. SUBRECIPIENT ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. SUBRECIPIENT acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). SUBRECIPIENT understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, SUBRECIPIENT shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. SUBRECIPIENT understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in SUBRECIPIENT's programs, services, and activities.



3. SUBRECIPIENT agrees to consider the need for language services for LEP persons when SUBRECIPIENT develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. SUBRECIPIENT acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon SUBRECIPIENT and SUBRECIPIENT's successors, transferees, and assignees for the period in which such assistance is provided.

5. SUBRECIPIENT understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates SUBRECIPIENT, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates SUBRECIPIENT for the period during which it retains ownership or possession of the property.

6. SUBRECIPIENT shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. SUBRECIPIENT shall comply with information requests, on-site compliance reviews and reporting requirements.

7. SUBRECIPIENT shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. SUBRECIPIENT also must inform the Department of the Treasury if SUBRECIPIENT has received no complaints under Title VI.

8. SUBRECIPIENT must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the SUBRECIPIENT and the administrative agency that made the finding. If SUBRECIPIENT settles a case or matter alleging such discrimination, SUBRECIPIENT must provide documentation of the settlement. If SUBRECIPIENT has not been the subject of any court or administrative agency finding of discrimination, please so state.

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY  
MISSISSIPPI MUNICIPALITY AND COUNTY WATER INFRASTRUCTURE GRANT**

STATE OF MISSISSIPPI  
COUNTY OF HINDS

MDEQ AGREEMENT NO. 608-2-SW-5.6

**SUBAWARD AGREEMENT**

This document is a Subaward Agreement (this “Agreement”) between the Mississippi Department of Environmental Quality (“MDEQ”), a Pass-through entity as defined in 2 C.F.R. § 200.1, and City of Diamondhead, UEI Number: K9M1T71V8JM9 (“SUBRECIPIENT”, and together with MDEQ, the “Parties”, and each, a “Party”) to provide grant funds for the Work conducted under the Mississippi Municipality and County Water Infrastructure (“MCWI”) Grant Program (the “Program”) as specified in Article 4.

**1. SOURCE OF FUNDS**

The grant funds provided by this Agreement are made available pursuant to the Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131), provided through funds awarded to the State of Mississippi pursuant to the American Rescue Plan Act of 2021 (“ARPA”), Public Law 117-2 (March 11, 2021), provided through the U.S. Department of Treasury pursuant to Federal Award # SLFRP0003 and CFDA No. 21.027 (Coronavirus State and Local Fiscal Recovery Funds) awarded on May 10, 2021, and subsequently to MDEQ through Mississippi Senate Bill 3056, 2022 Regular Session (April 26, 2022) and Mississippi House Bill 1716, 2023 Regular Session (March 22, 2023).

**2. PROJECT**

Under this Agreement, MDEQ agrees to disburse funds to SUBRECIPIENT in accordance with the terms herein to reimburse the costs associated with SUBRECIPIENT’s implementation of the project entitled “Turnberry Way Stormwater Improvements” (the “Project”).

**3. PURPOSE**

The purpose of this Project is to make a necessary investment in an upgrade to SUBRECIPIENT’s infrastructure. The Project is not for Research and Development.

**4. SCOPE OF WORK**

SUBRECIPIENT shall perform the tasks as described and identified in Attachment A, Scope of Work (the “Work”).

**5. TERMS AND CONDITIONS**

SUBRECIPIENT is subject to U.S. Treasury’s regulations governing ARPA, and all applicable terms and conditions in 2 C.F.R. Part 200 of the Office of Management and Budget (“OMB”) Uniform Guidance for Grants and Cooperative Agreements, as amended, including



Appendix II to Part 200, and all other OMB circulars, executive orders or other federal laws or regulations applicable to the services provided under this Agreement. All of these terms and conditions of this Agreement apply to SUBRECIPIENT and, as applicable, its Contractors/Contracted Parties.

#### 6. PERIOD OF PERFORMANCE

The Period of Performance shall commence upon the execution of this Agreement and shall end on **September 30, 2026**. Costs incurred on March 3, 2021, or thereafter, but prior to the commencement of the Period of Performance may be reimbursed provided MDEQ determines such costs are allowable and eligible. SUBRECIPIENT agrees to complete all tasks included in the Scope of Work within this Period of Performance, unless otherwise specified in writing by MDEQ. If, at any time during the Period of Performance of this Agreement, SUBRECIPIENT determines, based on the Work performed to date, that the Work cannot be completed within the Period of Performance, SUBRECIPIENT shall so notify MDEQ immediately in writing.

Failure to adhere to the requirements placed on MCWI funds can result in termination of this Agreement and may result in a demand for repayment by MDEQ. Moreover, if MDEQ is required to return any funds as a result of misspending on the part of SUBRECIPIENT, MDEQ reserves the right to seek and receive repayment of the amount of funds in question.

#### 7. CONSIDERATION AND PAYMENT

A. *Project Cost.* The total Project cost shall not exceed **\$315,446.26**, with said amount broken down as follows:

i. MCWI Grant Funds shall not exceed **\$154,482.85**;

ii. The Local Fiscal Recovery Funds ("LFRF") received by SUBRECIPIENT from the U.S. Treasury or the Mississippi Department of Finance and Administration used as matching funds in this Agreement shall not exceed **\$154,482.85**;

iii. Any LFRF transferred to SUBRECIPIENT from a county or municipality ("Transferred LFRF") shall not exceed **\$0.00**;

iv. Any other funds that SUBRECIPIENT obligates(ed) to the project that are not eligible for MCWI match ("Other Funds") shall not exceed **\$6,480.56**.

B. Professional fees that will be reimbursed with MCWI Grant Funds shall not exceed **\$12,617.85**. This amount is included in, and is not in addition to, the maximum MCWI Grant Funds specified in Article 7.A.i, above and Article 7.C., below.

SUBRECIPIENT understands and acknowledges that the amount of professional fees, as defined in the MCWI Regulations, Rule 1.1 E. (18), that may be matched with MCWI Grant Funds is limited to no more than 4% of the total amount of costs actually incurred on the Project, which in no case may be more than the total Project cost set forth in Article 7.A., above.



C. *Consideration.* As consideration for the performance of the tasks included in this Agreement, MDEQ agrees to reimburse SUBRECIPIENT an amount not to exceed **One Hundred Fifty-Four Thousand Four Hundred Eighty-Two Dollars and Eighty-Five Cents (\$154,482.85)** (the “Maximum Amount”).

MDEQ is under no obligation to provide funds to SUBRECIPIENT if SUBRECIPIENT has not met, or does not continue to meet, minimum federal requirements to receive funds, such as but not limited to, adhering to applicable procurement requirements found in 2 C.F.R. Part 200 *et al.* Moreover, MDEQ bears no responsibility relative to SUBRECIPIENT’s expenditure of its own funds. To that end, in the process of review of documentation for reimbursement, as well as compliance monitoring activities associated with the Program, MDEQ is not responsible or liable for any expenditure made by SUBRECIPIENT with its funds. As such, SUBRECIPIENT is solely responsible for compliance with federal and state requirements associated with its LFRF, its LFRF Transferred Funds, and any other funds it uses towards its Project that are not a part of the MCWI Grant Funds. SUBRECIPIENT must substantiate all expenditures in a compliant manner. MDEQ is under no obligation to reimburse costs incurred that are not demonstrably compliant with federal and state law.

D. *Payment.* Subject to available funding, as set forth in the terms and conditions of this Agreement, MDEQ shall pay all properly invoiced amounts due to SUBRECIPIENT within forty-five (45) days after MDEQ’s receipt of such invoice, except for any amounts disputed by MDEQ in good faith. Legislative approval may be required where MDEQ receives any claim of payment from SUBRECIPIENT that includes Work performed outside a one (1) year period from receipt of such invoice.

i. *Request for Payment.* SUBRECIPIENT shall request payment of funds hereunder for Project costs on a reimbursement basis (such requests, “Reimbursement Requests”), unless otherwise directed by MDEQ. SUBRECIPIENT shall submit Reimbursement Requests and supporting documentation of costs incurred as required by MDEQ to the MCWI Reimbursement Portal, located at <https://www.mswaterinfrastructure.com>. All Reimbursement Requests for time periods ending June 30 of any year, during the Period of Performance under this Agreement, shall be submitted no later than July 31 of that same year. Final invoice(s) shall be submitted to MDEQ no later than September 30, 2026. The Reimbursement Request shall include, at a minimum, breakdowns of personnel, position, dates worked, tasks performed, and totals for contract costs, materials, supplies and equipment, included in the Reimbursement Request. SUBRECIPIENT shall make Reimbursement Requests in accordance with the following procedures and subject to the following terms and conditions:

1. SUBRECIPIENT may make Reimbursement Requests no more frequently than once monthly during the Period of Performance of this Agreement.

2. SUBRECIPIENT shall request payment under this Agreement only for the costs necessary to complete the Scope of Work specifically stated and required under this Agreement.

3. SUBRECIPIENT shall not request payment under this Agreement for other services or other work the SUBRECIPIENT or its contractors may provide under any other Subaward or Contract not related to this Project.

4. SUBRECIPIENT shall provide on each Reimbursement Request the amount of its LFRF, Transferred LFRF and Other Funds expended. SUBRECIPIENT shall also provide the amount requested for professional fees. MDEQ will then determine the amount of MCWI Grant Funds that each Reimbursement Request qualifies for within the Program regulations and procedures.

5. SUBRECIPIENT understands that no payment, including final payment, shall be interpreted as acceptance of defective and incomplete Work, and SUBRECIPIENT shall remain responsible for performance in strict compliance with this Agreement. If MDEQ rejects, condemns or fails to approve any part of the Scope of Work, it may issue a Notice to Cure or terminate this Agreement.

6. MDEQ reserves the right to refuse to pay all or any part of the funds requested in a Reimbursement Request for any of the following reasons: 1) at MDEQ's discretion, the costs SUBRECIPIENT is seeking reimbursement for are not reasonable or necessary for the completion of the Work in this Agreement, 2) at MDEQ's discretion, the costs are ineligible for reimbursement under this Project, 3) at the time the request is submitted SUBRECIPIENT has failed to comply with any term or condition of this Agreement, 4) at the time the request is submitted the SUBRECIPIENT has otherwise failed to perform the Work to date in accordance with the Scope of Work, or 5) at the time the request is submitted the SUBRECIPIENT has otherwise failed to comply with applicable state, federal, or local laws and regulations.

ii. *Indirect Cost Rate.* Reimbursement of indirect costs and/or overhead is not allowed under this Agreement.

E. *Limitations on Expenditures.* MDEQ shall reimburse SUBRECIPIENT only for documented expenditures incurred on or after March 3, 2021: (i) reasonable and necessary to carry out the Scope of Work described in Attachment A; (ii) documented by contracts or other evidence of liability and (iii) incurred in accordance with all applicable requirements for the expenditure of funds payable under this Agreement.

F. *Improper Payments.* Any item of expenditure by SUBRECIPIENT under the terms of this Agreement which is found by auditors, investigators, other authorized



representatives of MDEQ, the U.S. Treasury, the Mississippi State Auditor or other federal or state instrumentality to be improper, unallowable, in violation of federal or state law, or the terms of this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of SUBRECIPIENT shall become SUBRECIPIENT's liability, and shall be paid solely by SUBRECIPIENT, immediately upon notification of such, from funds other than those provided by MDEQ under this Agreement. This provision shall survive the expiration or termination of this Agreement.

Any funds that are paid by MDEQ to SUBRECIPIENT that are not necessary for the completion of the Work in this Agreement and/or that are deemed ineligible must be returned to MDEQ immediately upon receiving MDEQ's written notification for return of funds.

G. *Clawback.* If funds are expended improperly or if an expense submitted for reimbursement is disallowed or deemed ineligible under federal, state or local laws and regulations, then payments to SUBRECIPIENT may be subject to clawback by MDEQ, the State of Mississippi or the U.S. Treasury.

#### 8. **AMENDMENTS OR MODIFICATION**

This Agreement may only be amended, modified, or supplemented by written agreement signed by the Parties hereto.

#### 9. **PROGRESS REPORTS**

SUBRECIPIENT shall provide required progress reports during the Period of Performance of this Agreement in a format prescribed by MDEQ. These reports shall be submitted in accordance with the following schedule, which may be amended from time to time:

<u>REPORTING PERIOD</u>	<u>DEADLINE</u>
October – December	January 15
January – March	April 15
April – June	July 15
July – September	October 15

This provision shall survive the expiration or termination of this Agreement with respect to any reports which SUBRECIPIENT is required to submit to MDEQ following the expiration or termination of this Agreement.

#### 10. **FAILURE TO TIMELY PERFORM**

SUBRECIPIENT shall take all reasonable measures to ensure MCWI Grant Funds and LFRF used for MCWI matching funds are obligated by 11:59 p.m. on August 30, 2024. SUBRECIPIENT acknowledges and agrees that its failure to obligate MCWI Grant Funds and



LFRF used for MCWI matching funds by 11:59 p.m. on August 30, 2024, may result in MDEQ modifying the MCWI Grant Funds awarded or terminating this Agreement.

If SUBRECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof authorized by MDEQ or if SUBRECIPIENT otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUBRECIPIENT in writing of the delay or nonperformance. If such delay or nonperformance is not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may terminate SUBRECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to perform properly.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUBRECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUBRECIPIENT in which the State has an interest.

#### 11. **FINAL PAYMENT AND REPORT**

When SUBRECIPIENT has performed all the Work, SUBRECIPIENT shall transmit to MDEQ a comprehensive report on the Work in a format prescribed by MDEQ (the "Final Report"). The Final Report shall be provided by SUBRECIPIENT to MDEQ within forty-five (45) days of Project completion in a format prescribed by MDEQ. Upon acceptance of Final Report, MDEQ will process final Reimbursement Request.

Upon satisfactory completion of the Work performed under this Agreement, as a condition before final payment under this Agreement or as a termination settlement under this Agreement, SUBRECIPIENT shall certify to MDEQ, on a form provided by MDEQ, that the final payment amount is the remaining amount that SUBRECIPIENT is owed under this Agreement and that no additional payment for its Work under this Project will be submitted for reimbursement. Unless otherwise provided in the Agreement, by state law or otherwise expressly agreed to by the Parties in this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of MDEQ's claims against SUBRECIPIENT or its sureties under this Agreement.

In consideration of the execution of this Agreement by MDEQ, SUBRECIPIENT agrees that acceptance of final payment from MDEQ will constitute an agreement by SUBRECIPIENT to release and forever discharge MDEQ, its agents, employees, officers, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which SUBRECIPIENT has at the time of acceptance of final payment or may thereafter have, arising out of, in connection with or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this Agreement.

#### 12. **FINANCIAL MANAGEMENT AND COMPLIANCE**

MDEQ requires that SUBRECIPIENT have in place, prior to the receipt of funds, a financial management system that will be able to isolate and trace every dollar funded under this Agreement from receipt to expenditure and have on file appropriate support documentation for each transaction. Examples of documentation include but are not limited to copies of checks paid

to vendors, vendor invoices, bills of lading, purchase vouchers, payrolls, bank statements and reconciliations, and real property and easement appraisals. Prior to the submittal of any such documentation to MDEQ, SUBRECIPIENT shall redact, in accordance with the definition of "Protected Personally Identifiable Information" ("Protected PII") as defined in 2 C.F.R. § 200.1, all information reflecting an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII as defined in 2 C.F.R. § 200.1 that is required by law to be disclosed. SUBRECIPIENT and any Contracted Parties (as such term is defined in Article 13 of this Agreement) are limited to the travel rates of the State of Mississippi, including dining and hotels, in place at the time of the expenditure for which reimbursement is sought; and SUBRECIPIENT shall audit any such invoice for same, clearly indicating the actual expense and the adjustment, if any.

SUBRECIPIENT certifies that all information provided to MDEQ or its representatives as part of the initial risk assessment for this Work is complete and accurate. SUBRECIPIENT agrees to submit to and cooperate with MDEQ in any additional risk assessment evaluation and periodic audit procedures to ensure adequate financial management of all funds. Further, SUBRECIPIENT shall continue to implement any recommendations and/or corrective action plan set forth in the report transmitted to SUBRECIPIENT based on the findings of the systems and processes for financial management, a copy of which is attached hereto as Attachment B and incorporated herein in its entirety.

### 13. CONTRACTS

SUBRECIPIENT shall be responsible for accountability of funds, compliance with Project specifications, and Project management by its contractors. MDEQ shall not bear responsibility for any liability caused or incurred by any contractor in performing Work. MDEQ shall not be deemed by virtue of this Agreement to have any contractual obligation to, or relationship with, any of SUBRECIPIENT's contractors, and the Parties agree and acknowledge that, as between MDEQ and SUBRECIPIENT, all Work shall be deemed to be the responsibility of, and performed by, SUBRECIPIENT. No contractor or other recipient of funds from MDEQ under this Agreement shall be deemed to be an agent, representative, employee or servant of MDEQ in connection with this Agreement. The parties with whom contracts or subaward agreements are entered into by the SUBRECIPIENT shall be referred to herein as "Contractor", "Contracted Party", or "Contracted Parties". In addition to ensuring that its Contracted Parties follow the applicable terms in this Agreement, SUBRECIPIENT shall require all terms and conditions set forth in Attachments A and C attached hereto to be included in all agreements between the SUBRECIPIENT and Contracted Parties, and in all agreements between Contracted Parties and Contracted Parties' contractors/sub-contractors.

### 14. APPLICABLE LAW

The Agreement shall be governed by and construed in accordance with the laws and regulations of the State of Mississippi and applicable federal law excluding, its conflict of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State.



SUBRECIPIENT shall comply with applicable federal, state, and local laws and regulations, including, but not limited to, the following:

A. *Authorizing Statutes.* Section 603 of the Social Security Act (42 U.S.C. § 803), as added by section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) and the Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131).

B. *Implementing Regulations.* Subpart A of 31 C.F.R. Part 35 (Coronavirus State and Local Fiscal Recovery Funds), as adopted in the Coronavirus State and Local Fiscal Recovery Funds interim final rule (86 Fed. Reg. 26786, applicable May 17, 2021 through March 31, 2022) and final rule (87 Fed. Reg. 4338, applicable January 27, 2022 through the end of the ARP/CSLFRF award term), and other subsequent regulations implementing Section 603 of the Social Security Act (42 U.S.C. § 803), as well as MDEQ regulations, entitled “Mississippi Commission on Environmental Quality Regulations for the Mississippi Municipality and County Water Infrastructure Grant Program.”

C. *Guidance Documents.* Applicable guidance documents issued from time-to-time by the US Department of Treasury and MDEQ, including the currently applicable version of the *Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds*.<sup>1</sup>

D. *Licenses, Certifications, Permits, Accreditation.* SUBRECIPIENT shall obtain and keep current any license, certification, permit, or accreditation required by federal, state, or local law and shall submit to MDEQ proof of any licensure, certification, permit or accreditation upon request.

## 15. **AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of MDEQ to proceed under this Agreement is conditioned upon the availability of the funds from state, federal, and/or other funding sources. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or 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 MDEQ, MDEQ shall have the right upon ten (10) working days written notice to the SUBRECIPIENT, to terminate this Agreement without damage, penalty, cost or expenses to MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

## 16. **REPRESENTATION REGARDING CONTINGENT FEES**

SUBRECIPIENT represents that it has not retained a person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

<sup>1</sup> <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.



## 17. REPRESENTATION REGARDING GRATUITIES

SUBRECIPIENT represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* and Section 9.105 (Gratuities) of the Mississippi Procurement Manual.

## 18. UNIFORM ADMINISTRATIVE REQUIREMENTS

SUBRECIPIENT shall comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 2 C.F.R. Part 200 ("UG"), as adopted by the Department of Treasury at 2 C.F.R. Part 1000 and as set forth in the Assistance Listing for ARP/CSLFRF (21.027). These requirements dictate how SUBRECIPIENT must administer the Subaward and how MDEQ must oversee SUBRECIPIENT. As a condition of receipt of the grant funds authorized in this Agreement, SUBRECIPIENT agrees to watch the video entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview" found at <https://www.mswaterinfrastructure.com>.

The applicable UG provisions are as follows:

- Subpart A, Acronyms and Definitions;
- Subpart B, General Provisions;
- Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards (except 2 C.F.R. §§ 200.204, .205, .210, and .213);
- Subpart D, Post Federal Award Requirements (except 2 C.F.R. §§ 200.305(b)(8) and (9), .308, .309, and .320(c)(4));
- Subpart E, Cost Principles;
- Subpart F, Audit Requirements;
- 2 C.F.R. Part 25 (Universal Identifier and System for Award Management);
- 2 C.F.R. Part 170 (Reporting Subaward and Executive Compensation Information); and
- 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)).

SUBRECIPIENT shall document compliance with UG requirements, including adoption and implementation of all required policies and procedures, within thirty (30) days of the execution of this Agreement and during all subsequent reviews during the term of the Agreement. It is SUBRECIPIENT's responsibility to comply with all UG requirements. Failure to do so may result in termination of the Agreement by MDEQ.

All real property acquired or improved, and equipment or supplies purchased in whole or in part with MCWI Grant Funds and/or LFRF, must be used, insured, managed, and disposed of in accordance with 2 C.F.R. § 200.311 through 2 C.F.R. § 200.316.

## 19. SUBAWARDS

If SUBRECIPIENT is authorized by MDEQ to make a Subaward, SUBRECIPIENT must include and incorporate the terms and conditions of this Agreement and any attachments, in all lower tier Subawards. Further, SUBRECIPIENT, who makes a Subaward, must follow and carry out all the responsibilities of a Pass-through entity described at 2 C.F.R. Part 200.

## 20. COMPLIANCE WITH LAWS

SUBRECIPIENT understands that MDEQ is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and SUBRECIPIENT agrees during the Period of Performance of the Agreement that SUBRECIPIENT will strictly adhere to this policy in its employment practices and work performance under this Agreement. SUBRECIPIENT shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified.

SUBRECIPIENT along with any sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d *et seq.*, as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement. Further, SUBRECIPIENT agrees to comply with the provisions of Attachment D to this Agreement.

Nothing contained in this Agreement may be deemed or construed in any way to stop, limit, or impair MDEQ from exercising or performing any regulatory, legislative, governmental, or other powers or functions.

SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under ARPA, including the information provided by the State and Local Fiscal Recovery Fund Final Rule.<sup>2</sup>

SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under the Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131).<sup>3</sup>

<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>

<sup>3</sup> <http://billstatus.ls.state.ms.us/documents/2023/pdf/SB/2400-2499/SB2444SG.pdf>



SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under the Regulations promulgated by MDEQ.<sup>4</sup>

## 21. **STOP WORK ORDER**

A. *Order to Stop Work:* MDEQ may, by written order to SUBRECIPIENT at any time and without notice to any surety, require SUBRECIPIENT to stop all or any part of the Work called for by this Agreement. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to SUBRECIPIENT, 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, SUBRECIPIENT shall forthwith comply with its terms and take all reasonable 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, MDEQ shall either:

- i. cancel the stop work order; or
- ii. terminate the Work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this Agreement.

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, SUBRECIPIENT shall have the right to resume Work. An appropriate adjustment may be made in the Period of Performance or Maximum Amount, or both, and the Agreement shall be modified in writing accordingly if:

- i. The stop work order results in an increase in the time required for, or in SUBRECIPIENT's cost properly allocable to, the performance of any part of this Agreement; and
- ii. SUBRECIPIENT provides a written claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that MDEQ decides that the facts justify such action and any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

C. *Termination of Stopped Work:* If a stop work order is not canceled and the Work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order may be allowed by adjustment or otherwise.

## 22. **E-PAYMENT**

SUBRECIPIENT agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. MDEQ agrees to make payment in

<sup>4</sup> <https://mswaterinfrastructure.com/wp-content/uploads/2022/07/MCWI-Grant-Program-Regulations-revised-12-16-22.pdf>



accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305.

### 23. INTERVENTIONS

If MDEQ determines that SUBRECIPIENT is not in compliance with this Agreement, MDEQ may initiate an intervention, in accordance with 2 C.F.R. § 200.208 and 2 C.F.R. § 200.339. The degree of SUBRECIPIENT’s performance or compliance deficiency will determine the degree of intervention. All possible interventions are listed below and will depend on the degree of deficiency in SUBRECIPIENT’s performance or compliance deficiency.

If MDEQ determines that an intervention is warranted, it shall provide written notice to SUBRECIPIENT of the intervention within thirty (30) days of the completion of a report review, desk review, onsite review, audit review, or procedures engagement review, or as soon as possible after MDEQ otherwise learns of a compliance or performance deficiency related to the execution of this Agreement. The written notice shall notify SUBRECIPIENT of the following related to the intervention:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the action needed to remove the additional requirement, if applicable;
- (4) The time allowed for completing the actions if applicable; and
- (5) The method for requesting reconsideration of the additional requirements imposed.

MDEQ may impose, but is not limited to, the following interventions on SUBRECIPIENT, based on the level of the compliance or performance deficiency that MDEQ determines:

**Level 1 Interventions.** These interventions may be required for minor compliance or performance issues:

- (1) SUBRECIPIENT addresses specific internal control, documentation, financial management, compliance, or performance issues within a specified time period; and/or
- (2) More frequent or more thorough reporting by the SUBRECIPIENT; and/or
- (3) More frequent monitoring by MDEQ; and/or
- (4) Required SUBRECIPIENT technical assistance or training.

**Level 2 Interventions.** These interventions may be required for more serious compliance or performance issues:

- (1) Restrictions on funding payment requests by SUBRECIPIENT; and/or
- (2) Disallowing payments to SUBRECIPIENT; and/or
- (3) Requiring repayment for disallowed cost items; and/or
- (4) Imposing probationary status on SUBRECIPIENT.

**Level 3 Interventions.** These interventions may be required for significant and/or persistent compliance or performance issues:

- (1) Temporary or indefinite funding suspension to SUBRECIPIENT; and/or
- (2) Nonrenewal of funding to SUBRECIPIENT in subsequent year; and/or
- (3) Terminate funding to SUBRECIPIENT in the current year; and/or
- (4) Initiate legal action against SUBRECIPIENT.

Interventions will remain in place until the underlying performance or compliance deficiency is addressed to the sole satisfaction of MDEQ.

#### 24. **E-VERIFICATION**

If applicable, SUBRECIPIENT represents and certifies that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1, *et seq.* The term “employee” as used herein means any person that is hired to perform work within the State. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. SUBRECIPIENT agrees to maintain records of such compliance. Upon request of the State of Mississippi and after approval of the Social Security Administration or Department of Homeland Security, when required, SUBRECIPIENT agrees to provide a copy of each such verification. SUBRECIPIENT further represents and certifies that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws.

#### 25. **TRANSPARENCY**

This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983” and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this Agreement is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Agreement may be posted to the Department of Finance and Administration’s independent agency Agreement website for public access at <https://www.transparency.mississippi.gov>. Information identified by SUBRECIPIENT as trade secrets or other proprietary information, including confidential vendor information, or any other information which is required to be confidential by state or federal law or outside the applicable freedom of information statutes will be redacted.

#### 26. **PAYMODE**

Payments by state agencies using the statewide accounting system shall be made and remittance information provided electronically as directed by MDEQ. These payments shall be deposited into the bank account of SUBRECIPIENT’s choice. MDEQ may, at its sole discretion, require SUBRECIPIENT to submit invoices and supporting documentation electronically at any time during the Period of Performance of this Agreement. SUBRECIPIENT understands and



agrees that MDEQ is exempt from the payment of taxes. All payments shall be in United States currency.

## 27. TERMINATION

The Agreement may be terminated as follows:

### A. *Termination For Convenience.*

The MDEQ may, when the interests of the State so require, terminate this Agreement in whole or in part, for the convenience of the State. MDEQ shall give written notice of the termination to SUBRECIPIENT specifying the part of the Agreement terminated and when termination becomes effective.

### B. *Termination For Default.*

If SUBRECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof or otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUBRECIPIENT in writing of the delay or nonperformance, and if not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may terminate SUBRECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUBRECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUBRECIPIENT in which the State has an interest.

### C. *Termination Upon Bankruptcy.*

This Agreement may be terminated in whole or in part by MDEQ upon written notice to SUBRECIPIENT, if SUBRECIPIENT should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by SUBRECIPIENT of an assignment for the benefit of its creditors. In the event of such termination, SUBRECIPIENT shall be entitled to recover just and equitable compensation for satisfactory Work performed under this Agreement, but in no case shall said compensation exceed the total Maximum Amount.

## 28. DISPUTES

Before pleading to any judicial system at any level, SUBRECIPIENT must exhaust all administrative remedies. A written complaint must first be sent to the Executive Director of MDEQ. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to SUBRECIPIENT within fourteen (14) days after receipt of information



requested by MDEQ or the Executive Director. If the decision of the Executive Director does not resolve the matter, successive administrative remedies may, at SUBRECIPIENT's option, include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Miss. Code Ann. §§ 49-17-35 and -41. In the alternative, at SUBRECIPIENT's option, the decision of the Executive Director may be deemed the final agency action on the complaint. Appeals from the decision of the Executive Director or the Commission shall follow procedures outlined in Miss. Code Ann. § 49-17-41.

29. **ANTI-ASSIGNMENT/CONTRACTING**

SUBRECIPIENT shall not assign, contract, or otherwise transfer this Agreement, in whole or in part without the prior written consent of MDEQ, which MDEQ may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MDEQ of any contract shall be deemed in any way to provide for the incurrence of any obligation of MDEQ in excess of the Maximum MCWI Grant Fund amount set forth in this Agreement, nor create any contractual relationship between MDEQ and any Contracted Parties. Contracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that MDEQ may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the Parties.

30. **AUTHORITY TO PARTICIPATE IN THIS AGREEMENT**

SUBRECIPIENT certifies and acknowledges it is a Mississippi county, municipality or public utility, as defined in MCWI regulation, Rule 1.1. E. (17), and that it has LFRF to use as match funding for this grant. SUBRECIPIENT further certifies and acknowledges that its entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

31. **DEBARMENT AND SUSPENSION**

SUBRECIPIENT certifies to the best of its knowledge and belief, that it, and its Contracted Parties:

A. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. have not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it 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 Agreement or Contract under a public transaction;

C. have not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for a 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;

D. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in Article 31. B. and Article 31. C., above; and

E. have not, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

### 32. **FAILURE TO ENFORCE**

Failure by MDEQ, at any time, to enforce the provisions of this Agreement shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of this Agreement or any part thereof or the right of MDEQ to enforce any provision at any time in accordance with its terms.

### 33. **INDEMNIFICATION**

SUBRECIPIENT agrees to maintain responsibility for the Project and agrees to provide proper operation and maintenance of all facilities for the life of the Project. SUBRECIPIENT's tort liability, if it is an entity of the State of Mississippi, is determined and controlled in accordance with Miss. Code Ann. §§ 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering this liability or of eliminating any defense available to the State under statute.

To the extent allowed by state law, SUBRECIPIENT agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and MDEQ's contractors from and against any and all claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of SUBRECIPIENT, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

### 34. **SUBRECIPIENT STATUS**

SUBRECIPIENT shall, during the entire Period of Performance of this Agreement, be construed to be an independent SUBRECIPIENT. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship or a joint venture relationship.

SUBRECIPIENT represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who are qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of MDEQ.

Any person assigned by SUBRECIPIENT to perform the services hereunder shall be an employee or independent contractor of SUBRECIPIENT, who shall have the sole right to hire and discharge its employees and/or independent contractors under this Agreement.



SUBRECIPIENT shall pay, when due, all salaries and wages of its employees and accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. This provision is solely for the benefit of MDEQ, and nothing herein shall be construed to create or impose any contractual or agency relationship between MDEQ and SUBRECIPIENT'S contractors, subcontractors, employees or agents.

35. **INSURANCE**

SUBRECIPIENT and its Contracted Parties agree to and shall maintain insurance that is required by applicable state, federal, and local laws and regulations.

36. **ENTIRE AGREEMENT**

This Agreement, including all attachments, represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This Agreement may be altered, amended, or modified only by a written document executed by MDEQ and SUBRECIPIENT. SUBRECIPIENT acknowledges that it has thoroughly read this Agreement and all its attachments and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein.

37. **ORAL STATEMENTS**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. All modifications to the Agreement must be made in writing by the MDEQ and agreed to by SUBRECIPIENT.

38. **RECORD RETENTION AND ACCESS TO RECORDS**

Provided SUBRECIPIENT is given reasonable advance written notice and such inspection is made during normal business hours of SUBRECIPIENT, the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of SUBRECIPIENT's books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the SUBRECIPIENT's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by SUBRECIPIENT for a minimum of ten (10) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

SUBRECIPIENT is not required to retain the above-mentioned records for the ten-year period prescribed in this Article and Article 39 only if all of the following conditions are satisfied:



A. SUBRECIPIENT has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;

B. No audit, litigation or other action arising out of or related in any way to this Project is commenced before SUBRECIPIENT provides the records and corresponding certification to MDEQ, in which case, SUBRECIPIENT shall retain the records until all issues arising out of the action are finally resolved; and

C. SUBRECIPIENT provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

39. **RIGHT TO AUDIT**

SUBRECIPIENT shall maintain all financial records, including electronic financial records, as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. SUBRECIPIENT shall retain these records for a period of ten (10) years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten (10) year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General. If any litigation, claim, investigation, or audit relating to this Agreement or an activity funded under the Agreement is started before the expiration of the ten (10) year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

40. **RIGHT TO INSPECT WORK; ACCESS**

MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Notwithstanding any review or inspection by MDEQ and their representatives, invitees, and consultants, SUBRECIPIENT shall not be relieved of its responsibility for performance of the Work or the submission of reports as expressly set forth in this Agreement solely by virtue of such inspection or review of the Work. SUBRECIPIENT shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to SUBRECIPIENT's performance of the Work.

41. **SEVERABILITY**

If any part of this Agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the Parties shall amend the Agreement as necessary to reflect the original intent of the Parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

42. **THIRD PARTY ACTION NOTIFICATION**

SUBRECIPIENT shall give the MDEQ prompt notice in writing of any action or suit filed, and prompt notice of any claim made against SUBRECIPIENT by any entity that may result in litigation related in any way to this Agreement.

43. **CERTIFICATIONS**

SUBRECIPIENT's execution of this Agreement shall be deemed as acknowledgement, guarantee and certification by SUBRECIPIENT of the following:

A. SUBRECIPIENT has sufficient LFRF in its possession that it will use to match MCWI Grant Funds.

B. SUBRECIPIENT will follow and abide by all ARPA guidelines, guidance, rules, regulations, and other criteria, as may be amended from time to time, by the U.S. Treasury regarding the use of monies under this Agreement.

C. As required in Attachment A, Article (1) a., SUBRECIPIENT's Authorized Representative, or his/her designee has watched the video on the MDEQ <https://www.mswaterinfrastructure.com> web-page entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview."

D. All of SUBRECIPIENT's LFRF used as MCWI matching funds, as well as MCWI Grant Funds received by SUBRECIPIENT, have been or will be used for the Project detailed in this Agreement.

E. Upon request by MDEQ, SUBRECIPIENT will provide an Intergovernmental Review Certification as detailed in the MCWI Regulations.

F. SUBRECIPIENT will obligate all MCWI Grant Funds and LFRF funds used for MCWI matching funds by 11:59 p.m. on August 30, 2024.

G. If SUBRECIPIENT does not complete the Project by December 31, 2026, SUBRECIPIENT acknowledges and agrees to complete the Project with other funds.

44. **WAIVER**

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



45. **COMPLIANCE WITH MISS. CODE ANN. § 31-5-37**

If applicable, SUBRECIPIENT shall ensure that Contracted Parties and bidders solicited for contract awards pursuant to this Agreement comply with the requirements of Miss. Code. Ann. § 31-5-37. SUBRECIPIENT shall require all bidders for any contract of Five Thousand Dollars (\$5,000.00) or more procured or to be procured with funds received pursuant to this Agreement to submit a certification with their bid that said bidder will comply with the provisions of Miss. Code. Ann. § 31-5-37. In addition, within seven (7) days of any such contract award procured or to be procured with funds received pursuant to this Agreement, SUBRECIPIENT shall require the Contracted Party to submit to both SUBRECIPIENT and the Mississippi Department of Employment Security ("MDES") an employment plan which conforms to the requirements contained in Miss. Code. Ann. § 31-5-37(2).

From the date written notice of any such contract award is received and until ten (10) business days after the receipt of the employment plan by MDES, the Contracted Party and any subcontractors shall not hire any personnel to fill vacant positions for the project except residents of the State of Mississippi who are to be verified by MDES and/or those qualified individuals who are submitted by MDES. However, the Contracting Party or contractor is authorized to employ Mississippi residents to begin work immediately if such persons are verified by MDES after employment by the Contracting Party or contractor. SUBRECIPIENT shall vacate the contract award in the event the Contracting Party fails to comply with the provisions of Miss. Code Ann. § 31-5-37.

46. **CONFLICT OF INTEREST**

SUBRECIPIENT shall immediately notify MDEQ in writing of any potential conflict of interest resulting from the representation of or service to other clients or otherwise affecting this Agreement in any way. If any such conflict occurs before it is discovered, SUBRECIPIENT shall notify MDEQ of such conflict within five (5) working days of such discovery. If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this Agreement per the "Termination for Convenience" clause.

47. **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and permitted assigns.

48. **NO THIRD-PARTY BENEFICIARIES**

This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

49. **EVALUATION**

SUBRECIPIENT agrees to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project(s) to which the Agreement relates, and to provide



in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, SUBRECIPIENT agrees to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.

50. **VENUE**

Venue for the resolution of any dispute, according to Article 28 of this Agreement, shall be before the Mississippi Commission on Environmental Quality if pursuing an administrative appeal, and venue for any subsequent litigation shall be in the Chancery Court of Hinds County, Mississippi.

51. **HEADINGS**

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

52. **NOTICES**

Unless otherwise specified in the Agreement, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of document(s) (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this subsection):

If to MDEQ:

Attention:  
MCWI Contract Administration  
515 East Amite Street  
P.O. Box 2249  
Jackson, MS 39201  
E-mail: MCWIdocuments@mdeq.ms.gov

If to SUBRECIPIENT:

Attention:  
Jon McCraw  
5000 Diamondhead Circle  
Diamondhead, MS 39525  
Phone: (228) 222-4626  
E-mail: jmccraw@diamondhead.ms.gov

53. **COUNTERPARTS**

Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

For the faithful performance and consideration provided under the terms of this Agreement, the Parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
Chris Wells  
Executive Director

\_\_\_\_\_  
Date

**CITY OF DIAMONDHEAD**

\_\_\_\_\_  
Mayor Nancy Depreo  
Signature of Authorized Representative

\_\_\_\_\_  
Nancy Depreo  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## ATTACHMENT A

### PROJECT NAME, SCOPE OF WORK AND PROJECT TIMELINE AND REQUIREMENTS

#### PROJECT NAME

**Turnberry Way Stormwater Improvements**

#### SCOPE OF WORK

The Project shall be defined as eligible activities funded in whole or in part under this Agreement as follows:

The Project includes installation of pipe culvert at Turnberry Way, necessary roadway improvements along Turnberry Way, channel improvements between Turnberry Drive and Turnberry Way, installation of an additional box culvert under Turnberry Drive, installation of an additional cell to the box culvert below Mahalo Drive, performance of a hydraulic study and removal of excess sediment in the pond, and associated appurtenances.

The general Scope of Work to be performed by SUBRECIPIENT is limited to that which was submitted in the MCWI Application Portal and approved for funding in accordance with the MCWI Program Regulations. SUBRECIPIENT hereby agrees that no additional eligible scope may be added to this Scope of Work without the express written consent of MDEQ. The Scope of Work eligible for reimbursement is limited to that identified as eligible by MDEQ and further described by plans, specifications, contract documents, and contract change orders approved as eligible by MDEQ.

#### PROJECT TIMELINE AND REQUIREMENTS

(1) SUBRECIPIENT agrees to the following schedule.

- a. Within 10 days of execution of this Agreement, SUBRECIPIENT's Authorized Representative, or his/her designee shall watch the video on the MDEQ <https://www.mswaterinfrastructure.com> web-page entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview." The web-page will track compliance with this requirement;
- b. On or about July 17, 2023, submit a complete set of plans, specifications, contract documents on each construction contract, and all applicable permits and agency approvals, if not already submitted to MDEQ;
- c. On or about August 7, 2023, advertise each construction contract for bids;

- d. On or about September 21, 2023, but no later than 45 days after advertisement for construction bids on each construction contract, receive bids;
- e. No later than 60 days after receipt of bids on each construction contract, execute construction contract;
- f. No later than 15 days after execution of construction contract, submit the entire procurement file (including but not limited to the request for proposals, evidence of publication, MBE/WBE documentation, all received bids, evaluation and selection documentation, executed construction contracts, and professional services contracts);
- g. No later than 60 days after execution of each construction contract, execute and submit a copy of the notice to proceed;
- h. No later than 5 business days after the estimated completion of 25% of construction, submit a notice to MDEQ of such milestone;
- i. No later than 5 business days after the estimated completion of 50% of construction, submit a notice to MDEQ of such milestone;
- j. No later than 5 business days after the estimated completion of 75% of construction, submit a notice to MDEQ of such milestone;
- k. No later than 5 business days after completion of each construction contract, notify MDEQ of construction completion;
- l. No later than 30 days after the contract completion date on each construction contract, submit all change orders which include time extensions, or a request and justification for delaying MDEQ's final construction observation;
- m. Within 45 days of Project completion, but no later than September 30, 2026, whichever is earlier, unless an extension of this date is specifically authorized by MDEQ, SUBRECIPIENT must submit the following: Final Report, as listed in Article 11, the engineer's certification of compliance with plans, specifications, and contract documents; final professional services contract amendments, if any; and all other administrative forms and documents required by the Agreement.

(2) To the extent any documents required to be submitted in Attachment A, Article (1) above were submitted with the MCWI Grant Application through the Application Portal, the documents do not need to be resubmitted.

(3) All documents required to be submitted in Attachment A, Article (1) above, shall be uploaded to the Documents Portal at <https://www.mswaterinfrastructure.com>.



**ATTACHMENT B****SYSTEMS AND PROCESSES FOR FINANCIAL MANAGEMENT  
RECOMMENDATIONS AND/OR CORRECTIVE ACTION PLAN**

An evaluation for the assessment of uncontrolled risks of the SUBRECIPIENT's systems and processes for financial management was performed as of part of the initial subaward process by MDEQ, acting on behalf of the State of Mississippi, as administrator of this Subaward Agreement. MDEQ requests the SUBRECIPIENT provide the following information to MDEQ as part of observations made during the evaluation. MDEQ reserves the right to re-evaluate the assessment of uncontrolled risks upon subsequently identified facts:

1. SUBRECIPIENT agrees to provide MDEQ with a copy of their annual audited financial statements within 60 days of the report release date throughout the Period of Performance.
2. SUBRECIPIENT agrees to promptly notify MDEQ of any significant changes made to the SUBRECIPIENT's current policies and procedures that would impact financial management systems and processes, specifically those communicated as part of the evaluation, from which the current residual risk levels were derived.
3. SUBRECIPIENT agrees to promptly notify MDEQ of any level of fraud or abuse discovered within the organization without regard to materiality that is related to the operation of the Project, as well as other pervasive deficiencies identified for grant management practices from any source, both external and internal, throughout the program performance period.
4. If deficiencies, significant deficiencies and/or material weaknesses are reported to the SUBRECIPIENT, as part of any assurance, attestation, or monitoring engagement during the program performance period, SUBRECIPIENT agrees to provide its response(s) and/or corrective action plan(s) to MDEQ so that prompt action can be taken by MDEQ to mitigate any elevated level of uncontrolled risk that could potentially impact MDEQ's or the SUBRECIPIENT's ability to comply with Federal Award and/or subaward requirements.
5. SUBRECIPIENT agrees that MDEQ has the right to perform monitoring procedures as deemed appropriate by MDEQ based on the assessed risk of noncompliance.

## ATTACHMENT C

### SUBAWARD TERMS AND CONDITIONS FOR CONTRACTED PARTIES

#### 1. AUTHORITY TO PARTICIPATE IN THIS AGREEMENT

The Contracted Party certifies that (a) it is either a 1) state agency, 2) a validly organized business that is authorized to do business in the state of Mississippi, 3) a nongovernmental organization, or 4) a political subdivision of the state of Mississippi with valid authority to enter into this agreement and; (b) entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (c) notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

#### 2. DEBARMENT AND SUSPENSION

Contractor/Contracted Parties certifies to the best of its knowledge and belief, that it:

A. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it 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;

C. has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for a 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;

D. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in Article 2.B. and Article 2.C., above; and,

E. has not, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

This agreement is subject to 31 C.F.R. Part 19.

#### 3. INDEMNIFICATION

To the extent allowed by state law, Contracted Party agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and the Department's contractors from and against any and all



claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of any Contracted Party, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

#### 4. **RELATIONSHIP STATUS**

The Contracted Party acknowledges and agrees that MDEQ is not a party, in any manner whatsoever, to any contract between the SUBRECIPIENT and the construction contractor(s), engineer(s), attorney(s), equipment supplier(s), contractor(s), or between any other parties of any kind whatsoever (hereinafter collectively referred to as "vendor"). The SUBRECIPIENT and Contracted Party also acknowledge and agree that any benefit to vendors contracting with the SUBRECIPIENT or Contracted Parties arising from or associated with this Agreement is strictly incidental and all such vendors are not and are not intended to be considered as third-party beneficiaries under any agreement between MDEQ and the SUBRECIPIENT.

Upon execution of any contract between the SUBRECIPIENT and any other party in regard to the project, MDEQ does not assume any authorities, duties, responsibilities, or liabilities under such contract. The SUBRECIPIENT and Contracted Party shall not have any authority to bind or otherwise obligate MDEQ, directly or indirectly, under any contract or agreement between the SUBRECIPIENT and any other party. The SUBRECIPIENT, Contracted Party and its vendors acknowledge and agree that any action taken by MDEQ in its role of grantor, or in its separate and distinct role as regulator shall not in any way change or alter its position as that of grantor.

MDEQ does not have any authority, duty, responsibility, or liability in contract claims or dispute identification, negotiation, resolution, or any other actions regarding contract claims under the contract(s) between the SUBRECIPIENT and any other party. The SUBRECIPIENT and the Contracted Party acknowledge and agree that MDEQ is not obligated to review, comment on, approve, or discuss the merits of any contract claims presented by or to any party. Any MDEQ reviews, approvals, observations, presence at meetings, written communications, verbal communications or other actions are not to be interpreted as addressing the merits of any claims, nor are they to be construed as interpreting the contract between the SUBRECIPIENT and the Contracted Party or any other parties.

#### 5. **ACCESS TO RECORDS**

Provided Contracted Party is given reasonable advance written notice and such inspection is made during normal business hours of Contracted Party, then the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contracted Party's books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the Contracted Party's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by Contracted Party for a minimum of ten (10) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the



records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

Contracted Party is not required to retain the above-mentioned records for the ten (10) year period prescribed in this Section and the "Right to Audit" provision only if all of the following conditions are satisfied:

- A. Contracted Party has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;
- B. No audit, litigation or other action arising out of or related in any way to this Project is commenced before Contracted Party provides the records and corresponding certification to MDEQ, in which case, Contracted Party shall retain the records until all issues arising out of the action are finally resolved; and
- C. Contracted Party provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

#### **6. RECORD RETENTION AND RIGHT TO AUDIT**

The Contracted Party shall maintain and retain books, documents, papers, financial records and other records, including electronic records, as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. Contracted Party shall retain these records for a period of ten (10) years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten (10) year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General. If any litigation, claim, investigation, or audit relating to this Agreement or an activity funded under the Agreement is started before the expiration of the ten (10) year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

#### **7. RIGHT TO INSPECT WORK; SITE ACCESS**

MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Upon request by MDEQ, Contracted Party shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to the performance of the Work.

#### **8. CONFLICT OF INTEREST**

The Contracted Party covenants that he presently has no interest and shall not acquire any interest direct or indirect in the Project that is the subject to this Agreement or any parcels therein, where applicable, or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contracted Party further covenants that, in the performance of this agreement, no person having any such interest shall be employed.

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

#### 9. COOPERATION AND EVALUATION

The Contracted Party agrees to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project(s) to which the Agreement relates, and to provide in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, the Contracted Party agrees to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.

## ATTACHMENT D

### ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

#### ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, SUBRECIPIENT provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to SUBRECIPIENT's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that SUBRECIPIENT may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of SUBRECIPIENT's program(s) and activity(ies), so long as any portion of SUBRECIPIENT's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. SUBRECIPIENT ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. SUBRECIPIENT acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). SUBRECIPIENT understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, SUBRECIPIENT shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. SUBRECIPIENT understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in SUBRECIPIENT's programs, services, and activities.



3. SUBRECIPIENT agrees to consider the need for language services for LEP persons when SUBRECIPIENT develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. SUBRECIPIENT acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon SUBRECIPIENT and SUBRECIPIENT's successors, transferees, and assignees for the period in which such assistance is provided.

5. SUBRECIPIENT understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates SUBRECIPIENT, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates SUBRECIPIENT for the period during which it retains ownership or possession of the property.

6. SUBRECIPIENT shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. SUBRECIPIENT shall comply with information requests, on-site compliance reviews and reporting requirements.

7. SUBRECIPIENT shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. SUBRECIPIENT also must inform the Department of the Treasury if SUBRECIPIENT has received no complaints under Title VI.

8. SUBRECIPIENT must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the SUBRECIPIENT and the administrative agency that made the finding. If SUBRECIPIENT settles a case or matter alleging such discrimination, SUBRECIPIENT must provide documentation of the settlement. If SUBRECIPIENT has not been the subject of any court or administrative agency finding of discrimination, please so state.

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY  
MISSISSIPPI MUNICIPALITY AND COUNTY WATER INFRASTRUCTURE GRANT**

STATE OF MISSISSIPPI  
COUNTY OF HINDS

MDEQ AGREEMENT NO. 619-2-SW-5.6

**SUBAWARD AGREEMENT**

This document is a Subaward Agreement (this “Agreement”) between the Mississippi Department of Environmental Quality (“MDEQ”), a Pass-through entity as defined in 2 C.F.R. § 200.1, and City of Diamondhead, UEI Number: K9M1T71V8JM9 (“SUBRECIPIENT”, and together with MDEQ, the “Parties”, and each, a “Party”) to provide grant funds for the Work conducted under the Mississippi Municipality and County Water Infrastructure (“MCWI”) Grant Program (the “Program”) as specified in Article 4.

**1. SOURCE OF FUNDS**

The grant funds provided by this Agreement are made available pursuant to the Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131), provided through funds awarded to the State of Mississippi pursuant to the American Rescue Plan Act of 2021 (“ARPA”), Public Law 117-2 (March 11, 2021), provided through the U.S. Department of Treasury pursuant to Federal Award # SLFRP0003 and CFDA No. 21.027 (Coronavirus State and Local Fiscal Recovery Funds) awarded on May 10, 2021, and subsequently to MDEQ through Mississippi Senate Bill 3056, 2022 Regular Session (April 26, 2022) and Mississippi House Bill 1716, 2023 Regular Session (March 22, 2023).

**2. PROJECT**

Under this Agreement, MDEQ agrees to disburse funds to SUBRECIPIENT in accordance with the terms herein to reimburse the costs associated with SUBRECIPIENT’s implementation of the project entitled “Hilo Way Master Drainage Improvements” (the “Project”).

**3. PURPOSE**

The purpose of this Project is to make a necessary investment in an upgrade to SUBRECIPIENT’s infrastructure. The Project is not for Research and Development.

**4. SCOPE OF WORK**

SUBRECIPIENT shall perform the tasks as described and identified in Attachment A, Scope of Work (the “Work”).

**5. TERMS AND CONDITIONS**

SUBRECIPIENT is subject to U.S. Treasury’s regulations governing ARPA, and all applicable terms and conditions in 2 C.F.R. Part 200 of the Office of Management and Budget (“OMB”) Uniform Guidance for Grants and Cooperative Agreements, as amended, including



Appendix II to Part 200, and all other OMB circulars, executive orders or other federal laws or regulations applicable to the services provided under this Agreement. All of these terms and conditions of this Agreement apply to SUBRECIPIENT and, as applicable, its Contractors/Contracted Parties.

## 6. PERIOD OF PERFORMANCE

The Period of Performance shall commence upon the execution of this Agreement and shall end on **September 30, 2026**. Costs incurred on March 3, 2021, or thereafter, but prior to the commencement of the Period of Performance may be reimbursed provided MDEQ determines such costs are allowable and eligible. SUBRECIPIENT agrees to complete all tasks included in the Scope of Work within this Period of Performance, unless otherwise specified in writing by MDEQ. If, at any time during the Period of Performance of this Agreement, SUBRECIPIENT determines, based on the Work performed to date, that the Work cannot be completed within the Period of Performance, SUBRECIPIENT shall so notify MDEQ immediately in writing.

Failure to adhere to the requirements placed on MCWI funds can result in termination of this Agreement and may result in a demand for repayment by MDEQ. Moreover, if MDEQ is required to return any funds as a result of misspending on the part of SUBRECIPIENT, MDEQ reserves the right to seek and receive repayment of the amount of funds in question.

## 7. CONSIDERATION AND PAYMENT

A. *Project Cost.* The total Project cost shall not exceed **\$701,952.00**, with said amount broken down as follows:

- i. MCWI Grant Funds shall not exceed **\$349,806.08**;
- ii. The Local Fiscal Recovery Funds ("LFRF") received by SUBRECIPIENT from the U.S. Treasury or the Mississippi Department of Finance and Administration used as matching funds in this Agreement shall not exceed **\$349,806.08**;
- iii. Any LFRF transferred to SUBRECIPIENT from a county or municipality ("Transferred LFRF") shall not exceed **\$0.00**;
- iv. Any other funds that SUBRECIPIENT obligates(ed) to the project that are not eligible for MCWI match ("Other Funds") shall not exceed **\$2,339.84**.

B. Professional fees that will be reimbursed with MCWI Grant Funds shall not exceed **\$28,078.08**. This amount is included in, and is not in addition to, the maximum MCWI Grant Funds specified in Article 7.A.i, above and Article 7.C., below.

SUBRECIPIENT understands and acknowledges that the amount of professional fees, as defined in the MCWI Regulations, Rule 1.1 E. (18), that may be matched with MCWI Grant Funds is limited to no more than 4% of the total amount of costs actually incurred on the Project, which in no case may be more than the total Project cost set forth in Article 7.A., above.



C. *Consideration.* As consideration for the performance of the tasks included in this Agreement, MDEQ agrees to reimburse SUBRECIPIENT an amount not to exceed **Three Hundred Forty-Nine Thousand Eight Hundred Six Dollars and Eight Cents (\$349,806.08)** (the “Maximum Amount”).

MDEQ is under no obligation to provide funds to SUBRECIPIENT if SUBRECIPIENT has not met, or does not continue to meet, minimum federal requirements to receive funds, such as but not limited to, adhering to applicable procurement requirements found in 2 C.F.R. Part 200 *et al.* Moreover, MDEQ bears no responsibility relative to SUBRECIPIENT’s expenditure of its own funds. To that end, in the process of review of documentation for reimbursement, as well as compliance monitoring activities associated with the Program, MDEQ is not responsible or liable for any expenditure made by SUBRECIPIENT with its funds. As such, SUBRECIPIENT is solely responsible for compliance with federal and state requirements associated with its LFRF, its LFRF Transferred Funds, and any other funds it uses towards its Project that are not a part of the MCWI Grant Funds. SUBRECIPIENT must substantiate all expenditures in a compliant manner. MDEQ is under no obligation to reimburse costs incurred that are not demonstrably compliant with federal and state law.

D. *Payment.* Subject to available funding, as set forth in the terms and conditions of this Agreement, MDEQ shall pay all properly invoiced amounts due to SUBRECIPIENT within forty-five (45) days after MDEQ’s receipt of such invoice, except for any amounts disputed by MDEQ in good faith. Legislative approval may be required where MDEQ receives any claim of payment from SUBRECIPIENT that includes Work performed outside a one (1) year period from receipt of such invoice.

i. *Request for Payment.* SUBRECIPIENT shall request payment of funds hereunder for Project costs on a reimbursement basis (such requests, “Reimbursement Requests”), unless otherwise directed by MDEQ. SUBRECIPIENT shall submit Reimbursement Requests and supporting documentation of costs incurred as required by MDEQ to the MCWI Reimbursement Portal, located at <https://www.mswaterinfrastructure.com>. All Reimbursement Requests for time periods ending June 30 of any year, during the Period of Performance under this Agreement, shall be submitted no later than July 31 of that same year. Final invoice(s) shall be submitted to MDEQ no later than September 30, 2026. The Reimbursement Request shall include, at a minimum, breakdowns of personnel, position, dates worked, tasks performed, and totals for contract costs, materials, supplies and equipment, included in the Reimbursement Request. SUBRECIPIENT shall make Reimbursement Requests in accordance with the following procedures and subject to the following terms and conditions:

1. SUBRECIPIENT may make Reimbursement Requests no more frequently than once monthly during the Period of Performance of this Agreement.

2. SUBRECIPIENT shall request payment under this Agreement only for the costs necessary to complete the Scope of Work specifically stated and required under this Agreement.

3. SUBRECIPIENT shall not request payment under this Agreement for other services or other work the SUBRECIPIENT or its contractors may provide under any other Subaward or Contract not related to this Project.

4. SUBRECIPIENT shall provide on each Reimbursement Request the amount of its LFRF, Transferred LFRF and Other Funds expended. SUBRECIPIENT shall also provide the amount requested for professional fees. MDEQ will then determine the amount of MCWI Grant Funds that each Reimbursement Request qualifies for within the Program regulations and procedures.

5. SUBRECIPIENT understands that no payment, including final payment, shall be interpreted as acceptance of defective and incomplete Work, and SUBRECIPIENT shall remain responsible for performance in strict compliance with this Agreement. If MDEQ rejects, condemns or fails to approve any part of the Scope of Work, it may issue a Notice to Cure or terminate this Agreement.

6. MDEQ reserves the right to refuse to pay all or any part of the funds requested in a Reimbursement Request for any of the following reasons: 1) at MDEQ's discretion, the costs SUBRECIPIENT is seeking reimbursement for are not reasonable or necessary for the completion of the Work in this Agreement, 2) at MDEQ's discretion, the costs are ineligible for reimbursement under this Project, 3) at the time the request is submitted SUBRECIPIENT has failed to comply with any term or condition of this Agreement, 4) at the time the request is submitted the SUBRECIPIENT has otherwise failed to perform the Work to date in accordance with the Scope of Work, or 5) at the time the request is submitted the SUBRECIPIENT has otherwise failed to comply with applicable state, federal, or local laws and regulations.

ii. *Indirect Cost Rate.* Reimbursement of indirect costs and/or overhead is not allowed under this Agreement.

E. *Limitations on Expenditures.* MDEQ shall reimburse SUBRECIPIENT only for documented expenditures incurred on or after March 3, 2021: (i) reasonable and necessary to carry out the Scope of Work described in Attachment A; (ii) documented by contracts or other evidence of liability and (iii) incurred in accordance with all applicable requirements for the expenditure of funds payable under this Agreement.

F. *Improper Payments.* Any item of expenditure by SUBRECIPIENT under the terms of this Agreement which is found by auditors, investigators, other authorized



representatives of MDEQ, the U.S. Treasury, the Mississippi State Auditor or other federal or state instrumentality to be improper, unallowable, in violation of federal or state law, or the terms of this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of SUBRECIPIENT shall become SUBRECIPIENT's liability, and shall be paid solely by SUBRECIPIENT, immediately upon notification of such, from funds other than those provided by MDEQ under this Agreement. This provision shall survive the expiration or termination of this Agreement.

Any funds that are paid by MDEQ to SUBRECIPIENT that are not necessary for the completion of the Work in this Agreement and/or that are deemed ineligible must be returned to MDEQ immediately upon receiving MDEQ's written notification for return of funds.

G. *Clawback.* If funds are expended improperly or if an expense submitted for reimbursement is disallowed or deemed ineligible under federal, state or local laws and regulations, then payments to SUBRECIPIENT may be subject to clawback by MDEQ, the State of Mississippi or the U.S. Treasury.

#### 8. **AMENDMENTS OR MODIFICATION**

This Agreement may only be amended, modified, or supplemented by written agreement signed by the Parties hereto.

#### 9. **PROGRESS REPORTS**

SUBRECIPIENT shall provide required progress reports during the Period of Performance of this Agreement in a format prescribed by MDEQ. These reports shall be submitted in accordance with the following schedule, which may be amended from time to time:

<u>REPORTING PERIOD</u>	<u>DEADLINE</u>
October – December	January 15
January – March	April 15
April – June	July 15
July – September	October 15

This provision shall survive the expiration or termination of this Agreement with respect to any reports which SUBRECIPIENT is required to submit to MDEQ following the expiration or termination of this Agreement.

#### 10. **FAILURE TO TIMELY PERFORM**

SUBRECIPIENT shall take all reasonable measures to ensure MCWI Grant Funds and LFRF used for MCWI matching funds are obligated by 11:59 p.m. on August 30, 2024. SUBRECIPIENT acknowledges and agrees that its failure to obligate MCWI Grant Funds and



LFRF used for MCWI matching funds by 11:59 p.m. on August 30, 2024, may result in MDEQ modifying the MCWI Grant Funds awarded or terminating this Agreement.

If SUBRECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof authorized by MDEQ or if SUBRECIPIENT otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUBRECIPIENT in writing of the delay or nonperformance. If such delay or nonperformance is not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may terminate SUBRECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to perform properly.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUBRECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUBRECIPIENT in which the State has an interest.

#### **11. FINAL PAYMENT AND REPORT**

When SUBRECIPIENT has performed all the Work, SUBRECIPIENT shall transmit to MDEQ a comprehensive report on the Work in a format prescribed by MDEQ (the "Final Report"). The Final Report shall be provided by SUBRECIPIENT to MDEQ within forty-five (45) days of Project completion in a format prescribed by MDEQ. Upon acceptance of Final Report, MDEQ will process final Reimbursement Request.

Upon satisfactory completion of the Work performed under this Agreement, as a condition before final payment under this Agreement or as a termination settlement under this Agreement, SUBRECIPIENT shall certify to MDEQ, on a form provided by MDEQ, that the final payment amount is the remaining amount that SUBRECIPIENT is owed under this Agreement and that no additional payment for its Work under this Project will be submitted for reimbursement. Unless otherwise provided in the Agreement, by state law or otherwise expressly agreed to by the Parties in this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of MDEQ's claims against SUBRECIPIENT or its sureties under this Agreement.

In consideration of the execution of this Agreement by MDEQ, SUBRECIPIENT agrees that acceptance of final payment from MDEQ will constitute an agreement by SUBRECIPIENT to release and forever discharge MDEQ, its agents, employees, officers, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which SUBRECIPIENT has at the time of acceptance of final payment or may thereafter have, arising out of, in connection with or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this Agreement.

#### **12. FINANCIAL MANAGEMENT AND COMPLIANCE**

MDEQ requires that SUBRECIPIENT have in place, prior to the receipt of funds, a financial management system that will be able to isolate and trace every dollar funded under this Agreement from receipt to expenditure and have on file appropriate support documentation for each transaction. Examples of documentation include but are not limited to copies of checks paid

to vendors, vendor invoices, bills of lading, purchase vouchers, payrolls, bank statements and reconciliations, and real property and easement appraisals. Prior to the submittal of any such documentation to MDEQ, SUBRECIPIENT shall redact, in accordance with the definition of "Protected Personally Identifiable Information" ("Protected PII") as defined in 2 C.F.R. § 200.1, all information reflecting an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII as defined in 2 C.F.R. § 200.1 that is required by law to be disclosed. SUBRECIPIENT and any Contracted Parties (as such term is defined in Article 13 of this Agreement) are limited to the travel rates of the State of Mississippi, including dining and hotels, in place at the time of the expenditure for which reimbursement is sought; and SUBRECIPIENT shall audit any such invoice for same, clearly indicating the actual expense and the adjustment, if any.

SUBRECIPIENT certifies that all information provided to MDEQ or its representatives as part of the initial risk assessment for this Work is complete and accurate. SUBRECIPIENT agrees to submit to and cooperate with MDEQ in any additional risk assessment evaluation and periodic audit procedures to ensure adequate financial management of all funds. Further, SUBRECIPIENT shall continue to implement any recommendations and/or corrective action plan set forth in the report transmitted to SUBRECIPIENT based on the findings of the systems and processes for financial management, a copy of which is attached hereto as Attachment B and incorporated herein in its entirety.

### 13. CONTRACTS

SUBRECIPIENT shall be responsible for accountability of funds, compliance with Project specifications, and Project management by its contractors. MDEQ shall not bear responsibility for any liability caused or incurred by any contractor in performing Work. MDEQ shall not be deemed by virtue of this Agreement to have any contractual obligation to, or relationship with, any of SUBRECIPIENT's contractors, and the Parties agree and acknowledge that, as between MDEQ and SUBRECIPIENT, all Work shall be deemed to be the responsibility of, and performed by, SUBRECIPIENT. No contractor or other recipient of funds from MDEQ under this Agreement shall be deemed to be an agent, representative, employee or servant of MDEQ in connection with this Agreement. The parties with whom contracts or subaward agreements are entered into by the SUBRECIPIENT shall be referred to herein as "Contractor", "Contracted Party", or "Contracted Parties". In addition to ensuring that its Contracted Parties follow the applicable terms in this Agreement, SUBRECIPIENT shall require all terms and conditions set forth in Attachments A and C attached hereto to be included in all agreements between the SUBRECIPIENT and Contracted Parties, and in all agreements between Contracted Parties and Contracted Parties' contractors/sub-contractors.

### 14. APPLICABLE LAW

The Agreement shall be governed by and construed in accordance with the laws and regulations of the State of Mississippi and applicable federal law excluding, its conflict of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State.



SUBRECIPIENT shall comply with applicable federal, state, and local laws and regulations, including, but not limited to, the following:

A. *Authorizing Statutes.* Section 603 of the Social Security Act (42 U.S.C. § 803), as added by section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) and the Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131).

B. *Implementing Regulations.* Subpart A of 31 C.F.R. Part 35 (Coronavirus State and Local Fiscal Recovery Funds), as adopted in the Coronavirus State and Local Fiscal Recovery Funds interim final rule (86 Fed. Reg. 26786, applicable May 17, 2021 through March 31, 2022) and final rule (87 Fed. Reg. 4338, applicable January 27, 2022 through the end of the ARP/CSLFRF award term), and other subsequent regulations implementing Section 603 of the Social Security Act (42 U.S.C. § 803), as well as MDEQ regulations, entitled “Mississippi Commission on Environmental Quality Regulations for the Mississippi Municipality and County Water Infrastructure Grant Program.”

C. *Guidance Documents.* Applicable guidance documents issued from time-to-time by the US Department of Treasury and MDEQ, including the currently applicable version of the *Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds*.<sup>1</sup>

D. *Licenses, Certifications, Permits, Accreditation.* SUBRECIPIENT shall obtain and keep current any license, certification, permit, or accreditation required by federal, state, or local law and shall submit to MDEQ proof of any licensure, certification, permit or accreditation upon request.

## 15. **AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of MDEQ to proceed under this Agreement is conditioned upon the availability of the funds from state, federal, and/or other funding sources. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or 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 MDEQ, MDEQ shall have the right upon ten (10) working days written notice to the SUBRECIPIENT, to terminate this Agreement without damage, penalty, cost or expenses to MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

## 16. **REPRESENTATION REGARDING CONTINGENT FEES**

SUBRECIPIENT represents that it has not retained a person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

<sup>1</sup> <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.



## 17. REPRESENTATION REGARDING GRATUITIES

SUBRECIPIENT represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* and Section 9.105 (Gratuities) of the Mississippi Procurement Manual.

## 18. UNIFORM ADMINISTRATIVE REQUIREMENTS

SUBRECIPIENT shall comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 2 C.F.R. Part 200 ("UG"), as adopted by the Department of Treasury at 2 C.F.R. Part 1000 and as set forth in the Assistance Listing for ARP/CSLFRF (21.027). These requirements dictate how SUBRECIPIENT must administer the Subaward and how MDEQ must oversee SUBRECIPIENT. As a condition of receipt of the grant funds authorized in this Agreement, SUBRECIPIENT agrees to watch the video entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview" found at <https://www.mswaterinfrastructure.com>.

The applicable UG provisions are as follows:

- Subpart A, Acronyms and Definitions;
- Subpart B, General Provisions;
- Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards (except 2 C.F.R. §§ 200.204, .205, .210, and .213);
- Subpart D, Post Federal Award Requirements (except 2 C.F.R. §§ 200.305(b)(8) and (9), .308, .309, and .320(c)(4));
- Subpart E, Cost Principles;
- Subpart F, Audit Requirements;
- 2 C.F.R. Part 25 (Universal Identifier and System for Award Management);
- 2 C.F.R. Part 170 (Reporting Subaward and Executive Compensation Information); and
- 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)).

SUBRECIPIENT shall document compliance with UG requirements, including adoption and implementation of all required policies and procedures, within thirty (30) days of the execution of this Agreement and during all subsequent reviews during the term of the Agreement. It is SUBRECIPIENT's responsibility to comply with all UG requirements. Failure to do so may result in termination of the Agreement by MDEQ.

All real property acquired or improved, and equipment or supplies purchased in whole or in part with MCWI Grant Funds and/or LFRF, must be used, insured, managed, and disposed of in accordance with 2 C.F.R. § 200.311 through 2 C.F.R. § 200.316.

## 19. **SUBAWARDS**

If SUBRECIPIENT is authorized by MDEQ to make a Subaward, SUBRECIPIENT must include and incorporate the terms and conditions of this Agreement and any attachments, in all lower tier Subawards. Further, SUBRECIPIENT, who makes a Subaward, must follow and carry out all the responsibilities of a Pass-through entity described at 2 C.F.R. Part 200.

## 20. **COMPLIANCE WITH LAWS**

SUBRECIPIENT understands that MDEQ is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and SUBRECIPIENT agrees during the Period of Performance of the Agreement that SUBRECIPIENT will strictly adhere to this policy in its employment practices and work performance under this Agreement. SUBRECIPIENT shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified.

SUBRECIPIENT along with any sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d *et seq.*, as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement. Further, SUBRECIPIENT agrees to comply with the provisions of Attachment D to this Agreement.

Nothing contained in this Agreement may be deemed or construed in any way to stop, limit, or impair MDEQ from exercising or performing any regulatory, legislative, governmental, or other powers or functions.

SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under ARPA, including the information provided by the State and Local Fiscal Recovery Fund Final Rule.<sup>2</sup>

SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under the Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131).<sup>3</sup>

<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>

<sup>3</sup> <http://billstatus.ls.state.ms.us/documents/2023/pdf/SB/2400-2499/SB2444SG.pdf>



SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under the Regulations promulgated by MDEQ.<sup>4</sup>

## 21. **STOP WORK ORDER**

A. *Order to Stop Work:* MDEQ may, by written order to SUBRECIPIENT at any time and without notice to any surety, require SUBRECIPIENT to stop all or any part of the Work called for by this Agreement. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to SUBRECIPIENT, 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, SUBRECIPIENT shall forthwith comply with its terms and take all reasonable 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, MDEQ shall either:

- i. cancel the stop work order; or
- ii. terminate the Work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this Agreement.

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, SUBRECIPIENT shall have the right to resume Work. An appropriate adjustment may be made in the Period of Performance or Maximum Amount, or both, and the Agreement shall be modified in writing accordingly if:

- i. The stop work order results in an increase in the time required for, or in SUBRECIPIENT's cost properly allocable to, the performance of any part of this Agreement; and
- ii. SUBRECIPIENT provides a written claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that MDEQ decides that the facts justify such action and any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

C. *Termination of Stopped Work:* If a stop work order is not canceled and the Work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order may be allowed by adjustment or otherwise.

## 22. **E-PAYMENT**

SUBRECIPIENT agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. MDEQ agrees to make payment in

<sup>4</sup> <https://mswaterinfrastructure.com/wp-content/uploads/2022/07/MCWI-Grant-Program-Regulations-revised-12-16-22.pdf>



accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305.

### 23. INTERVENTIONS

If MDEQ determines that SUBRECIPIENT is not in compliance with this Agreement, MDEQ may initiate an intervention, in accordance with 2 C.F.R. § 200.208 and 2 C.F.R. § 200.339. The degree of SUBRECIPIENT’s performance or compliance deficiency will determine the degree of intervention. All possible interventions are listed below and will depend on the degree of deficiency in SUBRECIPIENT’s performance or compliance deficiency.

If MDEQ determines that an intervention is warranted, it shall provide written notice to SUBRECIPIENT of the intervention within thirty (30) days of the completion of a report review, desk review, onsite review, audit review, or procedures engagement review, or as soon as possible after MDEQ otherwise learns of a compliance or performance deficiency related to the execution of this Agreement. The written notice shall notify SUBRECIPIENT of the following related to the intervention:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the action needed to remove the additional requirement, if applicable;
- (4) The time allowed for completing the actions if applicable; and
- (5) The method for requesting reconsideration of the additional requirements imposed.

MDEQ may impose, but is not limited to, the following interventions on SUBRECIPIENT, based on the level of the compliance or performance deficiency that MDEQ determines:

**Level 1 Interventions.** These interventions may be required for minor compliance or performance issues:

- (1) SUBRECIPIENT addresses specific internal control, documentation, financial management, compliance, or performance issues within a specified time period; and/or
- (2) More frequent or more thorough reporting by the SUBRECIPIENT; and/or
- (3) More frequent monitoring by MDEQ; and/or
- (4) Required SUBRECIPIENT technical assistance or training.

**Level 2 Interventions.** These interventions may be required for more serious compliance or performance issues:

- (1) Restrictions on funding payment requests by SUBRECIPIENT; and/or
- (2) Disallowing payments to SUBRECIPIENT; and/or
- (3) Requiring repayment for disallowed cost items; and/or
- (4) Imposing probationary status on SUBRECIPIENT.

**Level 3 Interventions.** These interventions may be required for significant and/or persistent compliance or performance issues:

- (1) Temporary or indefinite funding suspension to SUBRECIPIENT; and/or
- (2) Nonrenewal of funding to SUBRECIPIENT in subsequent year; and/or
- (3) Terminate funding to SUBRECIPIENT in the current year; and/or
- (4) Initiate legal action against SUBRECIPIENT.

Interventions will remain in place until the underlying performance or compliance deficiency is addressed to the sole satisfaction of MDEQ.

#### 24. **E-VERIFICATION**

If applicable, SUBRECIPIENT represents and certifies that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1, *et seq.* The term “employee” as used herein means any person that is hired to perform work within the State. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. SUBRECIPIENT agrees to maintain records of such compliance. Upon request of the State of Mississippi and after approval of the Social Security Administration or Department of Homeland Security, when required, SUBRECIPIENT agrees to provide a copy of each such verification. SUBRECIPIENT further represents and certifies that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws.

#### 25. **TRANSPARENCY**

This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983” and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this Agreement is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Agreement may be posted to the Department of Finance and Administration’s independent agency Agreement website for public access at <https://www.transparency.mississippi.gov>. Information identified by SUBRECIPIENT as trade secrets or other proprietary information, including confidential vendor information, or any other information which is required to be confidential by state or federal law or outside the applicable freedom of information statutes will be redacted.

#### 26. **PAYMODE**

Payments by state agencies using the statewide accounting system shall be made and remittance information provided electronically as directed by MDEQ. These payments shall be deposited into the bank account of SUBRECIPIENT’s choice. MDEQ may, at its sole discretion, require SUBRECIPIENT to submit invoices and supporting documentation electronically at any time during the Period of Performance of this Agreement. SUBRECIPIENT understands and



agrees that MDEQ is exempt from the payment of taxes. All payments shall be in United States currency.

## 27. **TERMINATION**

The Agreement may be terminated as follows:

### A. *Termination For Convenience.*

The MDEQ may, when the interests of the State so require, terminate this Agreement in whole or in part, for the convenience of the State. MDEQ shall give written notice of the termination to SUBRECIPIENT specifying the part of the Agreement terminated and when termination becomes effective.

### B. *Termination For Default.*

If SUBRECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof or otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUBRECIPIENT in writing of the delay or nonperformance, and if not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may terminate SUBRECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUBRECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUBRECIPIENT in which the State has an interest.

### C. *Termination Upon Bankruptcy.*

This Agreement may be terminated in whole or in part by MDEQ upon written notice to SUBRECIPIENT, if SUBRECIPIENT should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by SUBRECIPIENT of an assignment for the benefit of its creditors. In the event of such termination, SUBRECIPIENT shall be entitled to recover just and equitable compensation for satisfactory Work performed under this Agreement, but in no case shall said compensation exceed the total Maximum Amount.

## 28. **DISPUTES**

Before pleading to any judicial system at any level, SUBRECIPIENT must exhaust all administrative remedies. A written complaint must first be sent to the Executive Director of MDEQ. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to SUBRECIPIENT within fourteen (14) days after receipt of information



requested by MDEQ or the Executive Director. If the decision of the Executive Director does not resolve the matter, successive administrative remedies may, at SUBRECIPIENT's option, include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Miss. Code Ann. §§ 49-17-35 and -41. In the alternative, at SUBRECIPIENT's option, the decision of the Executive Director may be deemed the final agency action on the complaint. Appeals from the decision of the Executive Director or the Commission shall follow procedures outlined in Miss. Code Ann. § 49-17-41.

29. **ANTI-ASSIGNMENT/CONTRACTING**

SUBRECIPIENT shall not assign, contract, or otherwise transfer this Agreement, in whole or in part without the prior written consent of MDEQ, which MDEQ may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MDEQ of any contract shall be deemed in any way to provide for the incurrence of any obligation of MDEQ in excess of the Maximum MCWI Grant Fund amount set forth in this Agreement, nor create any contractual relationship between MDEQ and any Contracted Parties. Contracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that MDEQ may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the Parties.

30. **AUTHORITY TO PARTICIPATE IN THIS AGREEMENT**

SUBRECIPIENT certifies and acknowledges it is a Mississippi county, municipality or public utility, as defined in MCWI regulation, Rule 1.1. E. (17), and that it has LFRF to use as match funding for this grant. SUBRECIPIENT further certifies and acknowledges that its entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

31. **DEBARMENT AND SUSPENSION**

SUBRECIPIENT certifies to the best of its knowledge and belief, that it, and its Contracted Parties:

A. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. have not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it 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 Agreement or Contract under a public transaction;

C. have not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for a 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;

D. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in Article 31. B. and Article 31. C., above; and

E. have not, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

### 32. **FAILURE TO ENFORCE**

Failure by MDEQ, at any time, to enforce the provisions of this Agreement shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of this Agreement or any part thereof or the right of MDEQ to enforce any provision at any time in accordance with its terms.

### 33. **INDEMNIFICATION**

SUBRECIPIENT agrees to maintain responsibility for the Project and agrees to provide proper operation and maintenance of all facilities for the life of the Project. SUBRECIPIENT's tort liability, if it is an entity of the State of Mississippi, is determined and controlled in accordance with Miss. Code Ann. §§ 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering this liability or of eliminating any defense available to the State under statute.

To the extent allowed by state law, SUBRECIPIENT agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and MDEQ's contractors from and against any and all claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of SUBRECIPIENT, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

### 34. **SUBRECIPIENT STATUS**

SUBRECIPIENT shall, during the entire Period of Performance of this Agreement, be construed to be an independent SUBRECIPIENT. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship or a joint venture relationship.

SUBRECIPIENT represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who are qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of MDEQ.

Any person assigned by SUBRECIPIENT to perform the services hereunder shall be an employee or independent contractor of SUBRECIPIENT, who shall have the sole right to hire and discharge its employees and/or independent contractors under this Agreement.



SUBRECIPIENT shall pay, when due, all salaries and wages of its employees and accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. This provision is solely for the benefit of MDEQ, and nothing herein shall be construed to create or impose any contractual or agency relationship between MDEQ and SUBRECIPIENT'S contractors, subcontractors, employees or agents.

35. **INSURANCE**

SUBRECIPIENT and its Contracted Parties agree to and shall maintain insurance that is required by applicable state, federal, and local laws and regulations.

36. **ENTIRE AGREEMENT**

This Agreement, including all attachments, represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This Agreement may be altered, amended, or modified only by a written document executed by MDEQ and SUBRECIPIENT. SUBRECIPIENT acknowledges that it has thoroughly read this Agreement and all its attachments and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein.

37. **ORAL STATEMENTS**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. All modifications to the Agreement must be made in writing by the MDEQ and agreed to by SUBRECIPIENT.

38. **RECORD RETENTION AND ACCESS TO RECORDS**

Provided SUBRECIPIENT is given reasonable advance written notice and such inspection is made during normal business hours of SUBRECIPIENT, the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of SUBRECIPIENT's books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the SUBRECIPIENT's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by SUBRECIPIENT for a minimum of ten (10) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

SUBRECIPIENT is not required to retain the above-mentioned records for the ten-year period prescribed in this Article and Article 39 only if all of the following conditions are satisfied:



A. SUBRECIPIENT has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;

B. No audit, litigation or other action arising out of or related in any way to this Project is commenced before SUBRECIPIENT provides the records and corresponding certification to MDEQ, in which case, SUBRECIPIENT shall retain the records until all issues arising out of the action are finally resolved; and

C. SUBRECIPIENT provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

39. **RIGHT TO AUDIT**

SUBRECIPIENT shall maintain all financial records, including electronic financial records, as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. SUBRECIPIENT shall retain these records for a period of ten (10) years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten (10) year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General. If any litigation, claim, investigation, or audit relating to this Agreement or an activity funded under the Agreement is started before the expiration of the ten (10) year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

40. **RIGHT TO INSPECT WORK; ACCESS**

MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Notwithstanding any review or inspection by MDEQ and their representatives, invitees, and consultants, SUBRECIPIENT shall not be relieved of its responsibility for performance of the Work or the submission of reports as expressly set forth in this Agreement solely by virtue of such inspection or review of the Work. SUBRECIPIENT shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to SUBRECIPIENT's performance of the Work.

41. **SEVERABILITY**

If any part of this Agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the Parties shall amend the Agreement as necessary to reflect the original intent of the Parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

42. **THIRD PARTY ACTION NOTIFICATION**

SUBRECIPIENT shall give the MDEQ prompt notice in writing of any action or suit filed, and prompt notice of any claim made against SUBRECIPIENT by any entity that may result in litigation related in any way to this Agreement.

43. **CERTIFICATIONS**

SUBRECIPIENT's execution of this Agreement shall be deemed as acknowledgement, guarantee and certification by SUBRECIPIENT of the following:

A. SUBRECIPIENT has sufficient LFRF in its possession that it will use to match MCWI Grant Funds.

B. SUBRECIPIENT will follow and abide by all ARPA guidelines, guidance, rules, regulations, and other criteria, as may be amended from time to time, by the U.S. Treasury regarding the use of monies under this Agreement.

C. As required in Attachment A, Article (1) a., SUBRECIPIENT's Authorized Representative, or his/her designee has watched the video on the MDEQ <https://www.mswaterinfrastructure.com> web-page entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview."

D. All of SUBRECIPIENT's LFRF used as MCWI matching funds, as well as MCWI Grant Funds received by SUBRECIPIENT, have been or will be used for the Project detailed in this Agreement.

E. Upon request by MDEQ, SUBRECIPIENT will provide an Intergovernmental Review Certification as detailed in the MCWI Regulations.

F. SUBRECIPIENT will obligate all MCWI Grant Funds and LFRF funds used for MCWI matching funds by 11:59 p.m. on August 30, 2024.

G. If SUBRECIPIENT does not complete the Project by December 31, 2026, SUBRECIPIENT acknowledges and agrees to complete the Project with other funds.

44. **WAIVER**

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



45. **COMPLIANCE WITH MISS. CODE ANN. § 31-5-37**

If applicable, SUBRECIPIENT shall ensure that Contracted Parties and bidders solicited for contract awards pursuant to this Agreement comply with the requirements of Miss. Code. Ann. § 31-5-37. SUBRECIPIENT shall require all bidders for any contract of Five Thousand Dollars (\$5,000.00) or more procured or to be procured with funds received pursuant to this Agreement to submit a certification with their bid that said bidder will comply with the provisions of Miss. Code. Ann. § 31-5-37. In addition, within seven (7) days of any such contract award procured or to be procured with funds received pursuant to this Agreement, SUBRECIPIENT shall require the Contracted Party to submit to both SUBRECIPIENT and the Mississippi Department of Employment Security ("MDES") an employment plan which conforms to the requirements contained in Miss. Code. Ann. § 31-5-37(2).

From the date written notice of any such contract award is received and until ten (10) business days after the receipt of the employment plan by MDES, the Contracted Party and any subcontractors shall not hire any personnel to fill vacant positions for the project except residents of the State of Mississippi who are to be verified by MDES and/or those qualified individuals who are submitted by MDES. However, the Contracting Party or contractor is authorized to employ Mississippi residents to begin work immediately if such persons are verified by MDES after employment by the Contracting Party or contractor. SUBRECIPIENT shall vacate the contract award in the event the Contracting Party fails to comply with the provisions of Miss. Code Ann. § 31-5-37.

46. **CONFLICT OF INTEREST**

SUBRECIPIENT shall immediately notify MDEQ in writing of any potential conflict of interest resulting from the representation of or service to other clients or otherwise affecting this Agreement in any way. If any such conflict occurs before it is discovered, SUBRECIPIENT shall notify MDEQ of such conflict within five (5) working days of such discovery. If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this Agreement per the "Termination for Convenience" clause.

47. **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and permitted assigns.

48. **NO THIRD-PARTY BENEFICIARIES**

This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

49. **EVALUATION**

SUBRECIPIENT agrees to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project(s) to which the Agreement relates, and to provide



in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, SUBRECIPIENT agrees to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.

50. **VENUE**

Venue for the resolution of any dispute, according to Article 28 of this Agreement, shall be before the Mississippi Commission on Environmental Quality if pursuing an administrative appeal, and venue for any subsequent litigation shall be in the Chancery Court of Hinds County, Mississippi.

51. **HEADINGS**

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

52. **NOTICES**

Unless otherwise specified in the Agreement, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of document(s) (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this subsection):

If to MDEQ:

Attention:  
MCWI Contract Administration  
515 East Amite Street  
P.O. Box 2249  
Jackson, MS 39201  
E-mail: MCWIdocuments@mdeq.ms.gov

If to SUBRECIPIENT:

Attention:  
Jon McCraw  
5000 Diamondhead Circle  
Diamondhead, MS 39525  
Phone: (228) 222-4626  
E-mail: jmccraw@diamondhead.ms.gov

53. **COUNTERPARTS**

Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

For the faithful performance and consideration provided under the terms of this Agreement, the Parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
Chris Wells  
Executive Director

\_\_\_\_\_  
Date

**CITY OF DIAMONDHEAD**

\_\_\_\_\_  
Mayor Nancy Depreo  
Signature of Authorized Representative

\_\_\_\_\_  
Nancy Depreo  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## ATTACHMENT A

### PROJECT NAME, SCOPE OF WORK AND PROJECT TIMELINE AND REQUIREMENTS

#### PROJECT NAME

**Hilo Way Master Drainage Improvements**

#### SCOPE OF WORK

The Project shall be defined as eligible activities funded in whole or in part under this Agreement as follows:

The Project includes increasing the sizes of the drainage pipes and ditches, implementation of check dams and ponds, and associated appurtenances near Hilo Way and Diamondhead Drive.

The general Scope of Work to be performed by SUBRECIPIENT is limited to that which was submitted in the MCWI Application Portal and approved for funding in accordance with the MCWI Program Regulations. SUBRECIPIENT hereby agrees that no additional eligible scope may be added to this Scope of Work without the express written consent of MDEQ. The Scope of Work eligible for reimbursement is limited to that identified as eligible by MDEQ and further described by plans, specifications, contract documents, and contract change orders approved as eligible by MDEQ.

#### PROJECT TIMELINE AND REQUIREMENTS

(1) SUBRECIPIENT agrees to the following schedule.

- a. Within 10 days of execution of this Agreement, SUBRECIPIENT's Authorized Representative, or his/her designee shall watch the video on the MDEQ <https://www.mswaterinfrastructure.com> web-page entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview." The web-page will track compliance with this requirement;
- b. On or about August 28, 2023, submit a complete set of plans, specifications, contract documents on each construction contract, and all applicable permits and agency approvals, if not already submitted to MDEQ;
- c. On or about September 18, 2023, advertise each construction contract for bids;
- d. On or about November 2, 2023, but no later than 45 days after advertisement for construction bids on each construction contract, receive bids;

- e. No later than 60 days after receipt of bids on each construction contract, execute construction contract;
- f. No later than 15 days after execution of construction contract, submit the entire procurement file (including but not limited to the request for proposals, evidence of publication, MBE/WBE documentation, all received bids, evaluation and selection documentation, executed construction contracts, and professional services contracts);
- g. No later than 60 days after execution of each construction contract, execute and submit a copy of the notice to proceed;
- h. No later than 5 business days after the estimated completion of 25% of construction, submit a notice to MDEQ of such milestone;
- i. No later than 5 business days after the estimated completion of 50% of construction, submit a notice to MDEQ of such milestone;
- j. No later than 5 business days after the estimated completion of 75% of construction, submit a notice to MDEQ of such milestone;
- k. No later than 5 business days after completion of each construction contract, notify MDEQ of construction completion;
- l. No later than 30 days after the contract completion date on each construction contract, submit all change orders which include time extensions, or a request and justification for delaying MDEQ's final construction observation;
- m. Within 45 days of Project completion, but no later than September 30, 2026, whichever is earlier, unless an extension of this date is specifically authorized by MDEQ, SUBRECIPIENT must submit the following: Final Report, as listed in Article 11, the engineer's certification of compliance with plans, specifications, and contract documents; final professional services contract amendments, if any; and all other administrative forms and documents required by the Agreement.

(2) To the extent any documents required to be submitted in Attachment A, Article (1) above were submitted with the MCWI Grant Application through the Application Portal, the documents do not need to be resubmitted.

(3) All documents required to be submitted in Attachment A, Article (1) above, shall be uploaded to the Documents Portal at <https://www.mswaterinfrastructure.com>.

**ATTACHMENT B****SYSTEMS AND PROCESSES FOR FINANCIAL MANAGEMENT  
RECOMMENDATIONS AND/OR CORRECTIVE ACTION PLAN**

An evaluation for the assessment of uncontrolled risks of the SUBRECIPIENT's systems and processes for financial management was performed as of part of the initial subaward process by MDEQ, acting on behalf of the State of Mississippi, as administrator of this Subaward Agreement. MDEQ requests the SUBRECIPIENT provide the following information to MDEQ as part of observations made during the evaluation. MDEQ reserves the right to re-evaluate the assessment of uncontrolled risks upon subsequently identified facts:

1. SUBRECIPIENT agrees to provide MDEQ with a copy of their annual audited financial statements within 60 days of the report release date throughout the Period of Performance.
2. SUBRECIPIENT agrees to promptly notify MDEQ of any significant changes made to the SUBRECIPIENT's current policies and procedures that would impact financial management systems and processes, specifically those communicated as part of the evaluation, from which the current residual risk levels were derived.
3. SUBRECIPIENT agrees to promptly notify MDEQ of any level of fraud or abuse discovered within the organization without regard to materiality that is related to the operation of the Project, as well as other pervasive deficiencies identified for grant management practices from any source, both external and internal, throughout the program performance period.
4. If deficiencies, significant deficiencies and/or material weaknesses are reported to the SUBRECIPIENT, as part of any assurance, attestation, or monitoring engagement during the program performance period, SUBRECIPIENT agrees to provide its response(s) and/or corrective action plan(s) to MDEQ so that prompt action can be taken by MDEQ to mitigate any elevated level of uncontrolled risk that could potentially impact MDEQ's or the SUBRECIPIENT's ability to comply with Federal Award and/or subaward requirements.
5. SUBRECIPIENT agrees that MDEQ has the right to perform monitoring procedures as deemed appropriate by MDEQ based on the assessed risk of noncompliance.



## ATTACHMENT C

### SUBAWARD TERMS AND CONDITIONS FOR CONTRACTED PARTIES

#### 1. AUTHORITY TO PARTICIPATE IN THIS AGREEMENT

The Contracted Party certifies that (a) it is either a 1) state agency, 2) a validly organized business that is authorized to do business in the state of Mississippi, 3) a nongovernmental organization, or 4) a political subdivision of the state of Mississippi with valid authority to enter into this agreement and; (b) entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (c) notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

#### 2. DEBARMENT AND SUSPENSION

Contractor/Contracted Parties certifies to the best of its knowledge and belief, that it:

A. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it 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;

C. has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for a 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;

D. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in Article 2.B. and Article 2.C., above; and,

E. has not, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

This agreement is subject to 31 C.F.R. Part 19.

#### 3. INDEMNIFICATION

To the extent allowed by state law, Contracted Party agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and the Department's contractors from and against any and all

claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of any Contracted Party, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

#### 4. **RELATIONSHIP STATUS**

The Contracted Party acknowledges and agrees that MDEQ is not a party, in any manner whatsoever, to any contract between the SUBRECIPIENT and the construction contractor(s), engineer(s), attorney(s), equipment supplier(s), contractor(s), or between any other parties of any kind whatsoever (hereinafter collectively referred to as "vendor"). The SUBRECIPIENT and Contracted Party also acknowledge and agree that any benefit to vendors contracting with the SUBRECIPIENT or Contracted Parties arising from or associated with this Agreement is strictly incidental and all such vendors are not and are not intended to be considered as third-party beneficiaries under any agreement between MDEQ and the SUBRECIPIENT.

Upon execution of any contract between the SUBRECIPIENT and any other party in regard to the project, MDEQ does not assume any authorities, duties, responsibilities, or liabilities under such contract. The SUBRECIPIENT and Contracted Party shall not have any authority to bind or otherwise obligate MDEQ, directly or indirectly, under any contract or agreement between the SUBRECIPIENT and any other party. The SUBRECIPIENT, Contracted Party and its vendors acknowledge and agree that any action taken by MDEQ in its role of grantor, or in its separate and distinct role as regulator shall not in any way change or alter its position as that of grantor.

MDEQ does not have any authority, duty, responsibility, or liability in contract claims or dispute identification, negotiation, resolution, or any other actions regarding contract claims under the contract(s) between the SUBRECIPIENT and any other party. The SUBRECIPIENT and the Contracted Party acknowledge and agree that MDEQ is not obligated to review, comment on, approve, or discuss the merits of any contract claims presented by or to any party. Any MDEQ reviews, approvals, observations, presence at meetings, written communications, verbal communications or other actions are not to be interpreted as addressing the merits of any claims, nor are they to be construed as interpreting the contract between the SUBRECIPIENT and the Contracted Party or any other parties.

#### 5. **ACCESS TO RECORDS**

Provided Contracted Party is given reasonable advance written notice and such inspection is made during normal business hours of Contracted Party, then the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contracted Party's books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the Contracted Party's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by Contracted Party for a minimum of ten (10) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the



records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

Contracted Party is not required to retain the above-mentioned records for the ten (10) year period prescribed in this Section and the "Right to Audit" provision only if all of the following conditions are satisfied:

- A. Contracted Party has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;
- B. No audit, litigation or other action arising out of or related in any way to this Project is commenced before Contracted Party provides the records and corresponding certification to MDEQ, in which case, Contracted Party shall retain the records until all issues arising out of the action are finally resolved; and
- C. Contracted Party provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

#### **6. RECORD RETENTION AND RIGHT TO AUDIT**

The Contracted Party shall maintain and retain books, documents, papers, financial records and other records, including electronic records, as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. Contracted Party shall retain these records for a period of ten (10) years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten (10) year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General. If any litigation, claim, investigation, or audit relating to this Agreement or an activity funded under the Agreement is started before the expiration of the ten (10) year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

#### **7. RIGHT TO INSPECT WORK; SITE ACCESS**

MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Upon request by MDEQ, Contracted Party shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to the performance of the Work.

#### **8. CONFLICT OF INTEREST**

The Contracted Party covenants that he presently has no interest and shall not acquire any interest direct or indirect in the Project that is the subject to this Agreement or any parcels therein, where applicable, or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contracted Party further covenants that, in the performance of this agreement, no person having any such interest shall be employed.



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

#### 9. COOPERATION AND EVALUATION

The Contracted Party agrees to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project(s) to which the Agreement relates, and to provide in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, the Contracted Party agrees to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.

## ATTACHMENT D

### ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

#### ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, SUBRECIPIENT provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to SUBRECIPIENT's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that SUBRECIPIENT may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of SUBRECIPIENT's program(s) and activity(ies), so long as any portion of SUBRECIPIENT's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. SUBRECIPIENT ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. SUBRECIPIENT acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). SUBRECIPIENT understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, SUBRECIPIENT shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. SUBRECIPIENT understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in SUBRECIPIENT's programs, services, and activities.

3. SUBRECIPIENT agrees to consider the need for language services for LEP persons when SUBRECIPIENT develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. SUBRECIPIENT acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon SUBRECIPIENT and SUBRECIPIENT's successors, transferees, and assignees for the period in which such assistance is provided.

5. SUBRECIPIENT understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates SUBRECIPIENT, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates SUBRECIPIENT for the period during which it retains ownership or possession of the property.

6. SUBRECIPIENT shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. SUBRECIPIENT shall comply with information requests, on-site compliance reviews and reporting requirements.

7. SUBRECIPIENT shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. SUBRECIPIENT also must inform the Department of the Treasury if SUBRECIPIENT has received no complaints under Title VI.

8. SUBRECIPIENT must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the SUBRECIPIENT and the administrative agency that made the finding. If SUBRECIPIENT settles a case or matter alleging such discrimination, SUBRECIPIENT must provide documentation of the settlement. If SUBRECIPIENT has not been the subject of any court or administrative agency finding of discrimination, please so state.



**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY  
MISSISSIPPI MUNICIPALITY AND COUNTY WATER INFRASTRUCTURE GRANT**

STATE OF MISSISSIPPI  
COUNTY OF HINDS

MDEQ AGREEMENT NO. 451-2-SW-5.6

**SUBAWARD AGREEMENT**

This document is a Subaward Agreement (this "Agreement") between the Mississippi Department of Environmental Quality ("MDEQ"), a Pass-through entity as defined in 2 C.F.R. § 200.1, and City of Diamondhead, UEI Number: K9M1T71V8JM9 ("SUBRECIPIENT", and together with MDEQ, the "Parties", and each, a "Party") to provide grant funds for the Work conducted under the Mississippi Municipality and County Water Infrastructure ("MCWI") Grant Program (the "Program") as specified in Article 4.

**1. SOURCE OF FUNDS**

The grant funds provided by this Agreement are made available pursuant to the Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131), provided through funds awarded to the State of Mississippi pursuant to the American Rescue Plan Act of 2021 ("ARPA"), Public Law 117-2 (March 11, 2021), provided through the U.S. Department of Treasury pursuant to Federal Award # SLFRP0003 and CFDA No. 21.027 (Coronavirus State and Local Fiscal Recovery Funds) awarded on May 10, 2021, and subsequently to MDEQ through Mississippi Senate Bill 3056, 2022 Regular Session (April 26, 2022) and Mississippi House Bill 1716, 2023 Regular Session (March 22, 2023).

**2. PROJECT**

Under this Agreement, MDEQ agrees to disburse funds to SUBRECIPIENT in accordance with the terms herein to reimburse the costs associated with SUBRECIPIENT's implementation of the project entitled "Hilo Way Drainage Improvements" (the "Project").

**3. PURPOSE**

The purpose of this Project is to make a necessary investment in an upgrade to SUBRECIPIENT's infrastructure. The Project is not for Research and Development.

**4. SCOPE OF WORK**

SUBRECIPIENT shall perform the tasks as described and identified in Attachment A, Scope of Work (the "Work").

**5. TERMS AND CONDITIONS**

SUBRECIPIENT is subject to U.S. Treasury's regulations governing ARPA, and all applicable terms and conditions in 2 C.F.R. Part 200 of the Office of Management and Budget ("OMB") Uniform Guidance for Grants and Cooperative Agreements, as amended, including

Appendix II to Part 200, and all other OMB circulars, executive orders or other federal laws or regulations applicable to the services provided under this Agreement. All of these terms and conditions of this Agreement apply to SUBRECIPIENT and, as applicable, its Contractors/Contracted Parties.

## 6. PERIOD OF PERFORMANCE

The Period of Performance shall commence upon the execution of this Agreement and shall end on **September 30, 2026**. Costs incurred on March 3, 2021, or thereafter, but prior to the commencement of the Period of Performance may be reimbursed provided MDEQ determines such costs are allowable and eligible. SUBRECIPIENT agrees to complete all tasks included in the Scope of Work within this Period of Performance, unless otherwise specified in writing by MDEQ. If, at any time during the Period of Performance of this Agreement, SUBRECIPIENT determines, based on the Work performed to date, that the Work cannot be completed within the Period of Performance, SUBRECIPIENT shall so notify MDEQ immediately in writing.

Failure to adhere to the requirements placed on MCWI funds can result in termination of this Agreement and may result in a demand for repayment by MDEQ. Moreover, if MDEQ is required to return any funds as a result of misspending on the part of SUBRECIPIENT, MDEQ reserves the right to seek and receive repayment of the amount of funds in question.

## 7. CONSIDERATION AND PAYMENT

A. *Project Cost.* The total Project cost shall not exceed **\$184,479.06**, with said amount broken down as follows:

- i. MCWI Grant Funds shall not exceed **\$92,239.53**;
- ii. The Local Fiscal Recovery Funds ("LFRF") received by SUBRECIPIENT from the U.S. Treasury or the Mississippi Department of Finance and Administration used as matching funds in this Agreement shall not exceed **\$92,239.53**;
- iii. Any LFRF transferred to SUBRECIPIENT from a county or municipality ("Transferred LFRF") shall not exceed **\$0.00**;
- iv. Any other funds that SUBRECIPIENT obligates(ed) to the project that are not eligible for MCWI match ("Other Funds") shall not exceed **\$0.00**.

B. Professional fees that will be reimbursed with MCWI Grant Funds shall not exceed **\$7,379.16**. This amount is included in, and is not in addition to, the maximum MCWI Grant Funds specified in Article 7.A.i, above and Article 7.C., below.

SUBRECIPIENT understands and acknowledges that the amount of professional fees, as defined in the MCWI Regulations, Rule 1.1 E. (18), that may be matched with MCWI Grant Funds is limited to no more than 4% of the total amount of costs actually incurred on the Project, which in no case may be more than the total Project cost set forth in Article 7.A., above.



C. *Consideration.* As consideration for the performance of the tasks included in this Agreement, MDEQ agrees to reimburse SUBRECIPIENT an amount not to exceed **Ninety-Two Thousand Two Hundred Thirty-Nine Dollars and Fifty-Three Cents (\$92,239.53)** (the “Maximum Amount”).

MDEQ is under no obligation to provide funds to SUBRECIPIENT if SUBRECIPIENT has not met, or does not continue to meet, minimum federal requirements to receive funds, such as but not limited to, adhering to applicable procurement requirements found in 2 C.F.R. Part 200 *et al.* Moreover, MDEQ bears no responsibility relative to SUBRECIPIENT’s expenditure of its own funds. To that end, in the process of review of documentation for reimbursement, as well as compliance monitoring activities associated with the Program, MDEQ is not responsible or liable for any expenditure made by SUBRECIPIENT with its funds. As such, SUBRECIPIENT is solely responsible for compliance with federal and state requirements associated with its LFRF, its LFRF Transferred Funds, and any other funds it uses towards its Project that are not a part of the MCWI Grant Funds. SUBRECIPIENT must substantiate all expenditures in a compliant manner. MDEQ is under no obligation to reimburse costs incurred that are not demonstrably compliant with federal and state law.

D. *Payment.* Subject to available funding, as set forth in the terms and conditions of this Agreement, MDEQ shall pay all properly invoiced amounts due to SUBRECIPIENT within forty-five (45) days after MDEQ’s receipt of such invoice, except for any amounts disputed by MDEQ in good faith. Legislative approval may be required where MDEQ receives any claim of payment from SUBRECIPIENT that includes Work performed outside a one (1) year period from receipt of such invoice.

i. *Request for Payment.* SUBRECIPIENT shall request payment of funds hereunder for Project costs on a reimbursement basis (such requests, “Reimbursement Requests”), unless otherwise directed by MDEQ. SUBRECIPIENT shall submit Reimbursement Requests and supporting documentation of costs incurred as required by MDEQ to the MCWI Reimbursement Portal, located at <https://www.mswaterinfrastructure.com>. All Reimbursement Requests for time periods ending June 30 of any year, during the Period of Performance under this Agreement, shall be submitted no later than July 31 of that same year. Final invoice(s) shall be submitted to MDEQ no later than September 30, 2026. The Reimbursement Request shall include, at a minimum, breakdowns of personnel, position, dates worked, tasks performed, and totals for contract costs, materials, supplies and equipment, included in the Reimbursement Request. SUBRECIPIENT shall make Reimbursement Requests in accordance with the following procedures and subject to the following terms and conditions:

1. SUBRECIPIENT may make Reimbursement Requests no more frequently than once monthly during the Period of Performance of this Agreement.



2. SUBRECIPIENT shall request payment under this Agreement only for the costs necessary to complete the Scope of Work specifically stated and required under this Agreement.

3. SUBRECIPIENT shall not request payment under this Agreement for other services or other work the SUBRECIPIENT or its contractors may provide under any other Subaward or Contract not related to this Project.

4. SUBRECIPIENT shall provide on each Reimbursement Request the amount of its LFRF, Transferred LFRF and Other Funds expended. SUBRECIPIENT shall also provide the amount requested for professional fees. MDEQ will then determine the amount of MCWI Grant Funds that each Reimbursement Request qualifies for within the Program regulations and procedures.

5. SUBRECIPIENT understands that no payment, including final payment, shall be interpreted as acceptance of defective and incomplete Work, and SUBRECIPIENT shall remain responsible for performance in strict compliance with this Agreement. If MDEQ rejects, condemns or fails to approve any part of the Scope of Work, it may issue a Notice to Cure or terminate this Agreement.

6. MDEQ reserves the right to refuse to pay all or any part of the funds requested in a Reimbursement Request for any of the following reasons: 1) at MDEQ's discretion, the costs SUBRECIPIENT is seeking reimbursement for are not reasonable or necessary for the completion of the Work in this Agreement, 2) at MDEQ's discretion, the costs are ineligible for reimbursement under this Project, 3) at the time the request is submitted SUBRECIPIENT has failed to comply with any term or condition of this Agreement, 4) at the time the request is submitted the SUBRECIPIENT has otherwise failed to perform the Work to date in accordance with the Scope of Work, or 5) at the time the request is submitted the SUBRECIPIENT has otherwise failed to comply with applicable state, federal, or local laws and regulations.

ii. *Indirect Cost Rate.* Reimbursement of indirect costs and/or overhead is not allowed under this Agreement.

E. *Limitations on Expenditures.* MDEQ shall reimburse SUBRECIPIENT only for documented expenditures incurred on or after March 3, 2021: (i) reasonable and necessary to carry out the Scope of Work described in Attachment A; (ii) documented by contracts or other evidence of liability and (iii) incurred in accordance with all applicable requirements for the expenditure of funds payable under this Agreement.

F. *Improper Payments.* Any item of expenditure by SUBRECIPIENT under the terms of this Agreement which is found by auditors, investigators, other authorized

representatives of MDEQ, the U.S. Treasury, the Mississippi State Auditor or other federal or state instrumentality to be improper, unallowable, in violation of federal or state law, or the terms of this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of SUBRECIPIENT shall become SUBRECIPIENT's liability, and shall be paid solely by SUBRECIPIENT, immediately upon notification of such, from funds other than those provided by MDEQ under this Agreement. This provision shall survive the expiration or termination of this Agreement.

Any funds that are paid by MDEQ to SUBRECIPIENT that are not necessary for the completion of the Work in this Agreement and/or that are deemed ineligible must be returned to MDEQ immediately upon receiving MDEQ's written notification for return of funds.

G. *Clawback.* If funds are expended improperly or if an expense submitted for reimbursement is disallowed or deemed ineligible under federal, state or local laws and regulations, then payments to SUBRECIPIENT may be subject to clawback by MDEQ, the State of Mississippi or the U.S. Treasury.

#### 8. **AMENDMENTS OR MODIFICATION**

This Agreement may only be amended, modified, or supplemented by written agreement signed by the Parties hereto.

#### 9. **PROGRESS REPORTS**

SUBRECIPIENT shall provide required progress reports during the Period of Performance of this Agreement in a format prescribed by MDEQ. These reports shall be submitted in accordance with the following schedule, which may be amended from time to time:

<u>REPORTING PERIOD</u>	<u>DEADLINE</u>
October – December	January 15
January – March	April 15
April – June	July 15
July – September	October 15

This provision shall survive the expiration or termination of this Agreement with respect to any reports which SUBRECIPIENT is required to submit to MDEQ following the expiration or termination of this Agreement.

#### 10. **FAILURE TO TIMELY PERFORM**

SUBRECIPIENT shall take all reasonable measures to ensure MCWI Grant Funds and LFRF used for MCWI matching funds are obligated by 11:59 p.m. on August 30, 2024. SUBRECIPIENT acknowledges and agrees that its failure to obligate MCWI Grant Funds and



LFRF used for MCWI matching funds by 11:59 p.m. on August 30, 2024, may result in MDEQ modifying the MCWI Grant Funds awarded or terminating this Agreement.

If SUBRECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof authorized by MDEQ or if SUBRECIPIENT otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUBRECIPIENT in writing of the delay or nonperformance. If such delay or nonperformance is not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may terminate SUBRECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to perform properly.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUBRECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUBRECIPIENT in which the State has an interest.

#### **11. FINAL PAYMENT AND REPORT**

When SUBRECIPIENT has performed all the Work, SUBRECIPIENT shall transmit to MDEQ a comprehensive report on the Work in a format prescribed by MDEQ (the "Final Report"). The Final Report shall be provided by SUBRECIPIENT to MDEQ within forty-five (45) days of Project completion in a format prescribed by MDEQ. Upon acceptance of Final Report, MDEQ will process final Reimbursement Request.

Upon satisfactory completion of the Work performed under this Agreement, as a condition before final payment under this Agreement or as a termination settlement under this Agreement, SUBRECIPIENT shall certify to MDEQ, on a form provided by MDEQ, that the final payment amount is the remaining amount that SUBRECIPIENT is owed under this Agreement and that no additional payment for its Work under this Project will be submitted for reimbursement. Unless otherwise provided in the Agreement, by state law or otherwise expressly agreed to by the Parties in this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of MDEQ's claims against SUBRECIPIENT or its sureties under this Agreement.

In consideration of the execution of this Agreement by MDEQ, SUBRECIPIENT agrees that acceptance of final payment from MDEQ will constitute an agreement by SUBRECIPIENT to release and forever discharge MDEQ, its agents, employees, officers, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which SUBRECIPIENT has at the time of acceptance of final payment or may thereafter have, arising out of, in connection with or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this Agreement.

#### **12. FINANCIAL MANAGEMENT AND COMPLIANCE**

MDEQ requires that SUBRECIPIENT have in place, prior to the receipt of funds, a financial management system that will be able to isolate and trace every dollar funded under this Agreement from receipt to expenditure and have on file appropriate support documentation for each transaction. Examples of documentation include but are not limited to copies of checks paid



to vendors, vendor invoices, bills of lading, purchase vouchers, payrolls, bank statements and reconciliations, and real property and easement appraisals. Prior to the submittal of any such documentation to MDEQ, SUBRECIPIENT shall redact, in accordance with the definition of "Protected Personally Identifiable Information" ("Protected PII") as defined in 2 C.F.R. § 200.1, all information reflecting an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII as defined in 2 C.F.R. § 200.1 that is required by law to be disclosed. SUBRECIPIENT and any Contracted Parties (as such term is defined in Article 13 of this Agreement) are limited to the travel rates of the State of Mississippi, including dining and hotels, in place at the time of the expenditure for which reimbursement is sought; and SUBRECIPIENT shall audit any such invoice for same, clearly indicating the actual expense and the adjustment, if any.

SUBRECIPIENT certifies that all information provided to MDEQ or its representatives as part of the initial risk assessment for this Work is complete and accurate. SUBRECIPIENT agrees to submit to and cooperate with MDEQ in any additional risk assessment evaluation and periodic audit procedures to ensure adequate financial management of all funds. Further, SUBRECIPIENT shall continue to implement any recommendations and/or corrective action plan set forth in the report transmitted to SUBRECIPIENT based on the findings of the systems and processes for financial management, a copy of which is attached hereto as Attachment B and incorporated herein in its entirety.

### 13. CONTRACTS

SUBRECIPIENT shall be responsible for accountability of funds, compliance with Project specifications, and Project management by its contractors. MDEQ shall not bear responsibility for any liability caused or incurred by any contractor in performing Work. MDEQ shall not be deemed by virtue of this Agreement to have any contractual obligation to, or relationship with, any of SUBRECIPIENT's contractors, and the Parties agree and acknowledge that, as between MDEQ and SUBRECIPIENT, all Work shall be deemed to be the responsibility of, and performed by, SUBRECIPIENT. No contractor or other recipient of funds from MDEQ under this Agreement shall be deemed to be an agent, representative, employee or servant of MDEQ in connection with this Agreement. The parties with whom contracts or subaward agreements are entered into by the SUBRECIPIENT shall be referred to herein as "Contractor", "Contracted Party", or "Contracted Parties". In addition to ensuring that its Contracted Parties follow the applicable terms in this Agreement, SUBRECIPIENT shall require all terms and conditions set forth in Attachments A and C attached hereto to be included in all agreements between the SUBRECIPIENT and Contracted Parties, and in all agreements between Contracted Parties and Contracted Parties' contractors/sub-contractors.

### 14. APPLICABLE LAW

The Agreement shall be governed by and construed in accordance with the laws and regulations of the State of Mississippi and applicable federal law excluding, its conflict of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State.

SUBRECIPIENT shall comply with applicable federal, state, and local laws and regulations, including, but not limited to, the following:

A. *Authorizing Statutes.* Section 603 of the Social Security Act (42 U.S.C. § 803), as added by section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) and the Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131).

B. *Implementing Regulations.* Subpart A of 31 C.F.R. Part 35 (Coronavirus State and Local Fiscal Recovery Funds), as adopted in the Coronavirus State and Local Fiscal Recovery Funds interim final rule (86 Fed. Reg. 26786, applicable May 17, 2021 through March 31, 2022) and final rule (87 Fed. Reg. 4338, applicable January 27, 2022 through the end of the ARP/CSLFRF award term), and other subsequent regulations implementing Section 603 of the Social Security Act (42 U.S.C. § 803), as well as MDEQ regulations, entitled “Mississippi Commission on Environmental Quality Regulations for the Mississippi Municipality and County Water Infrastructure Grant Program.”

C. *Guidance Documents.* Applicable guidance documents issued from time-to-time by the US Department of Treasury and MDEQ, including the currently applicable version of the *Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds*.<sup>1</sup>

D. *Licenses, Certifications, Permits, Accreditation.* SUBRECIPIENT shall obtain and keep current any license, certification, permit, or accreditation required by federal, state, or local law and shall submit to MDEQ proof of any licensure, certification, permit or accreditation upon request.

## 15. **AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of MDEQ to proceed under this Agreement is conditioned upon the availability of the funds from state, federal, and/or other funding sources. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or 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 MDEQ, MDEQ shall have the right upon ten (10) working days written notice to the SUBRECIPIENT, to terminate this Agreement without damage, penalty, cost or expenses to MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

## 16. **REPRESENTATION REGARDING CONTINGENT FEES**

SUBRECIPIENT represents that it has not retained a person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

<sup>1</sup> <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.



## 17. REPRESENTATION REGARDING GRATUITIES

SUBRECIPIENT represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* and Section 9.105 (Gratuities) of the Mississippi Procurement Manual.

## 18. UNIFORM ADMINISTRATIVE REQUIREMENTS

SUBRECIPIENT shall comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 2 C.F.R. Part 200 ("UG"), as adopted by the Department of Treasury at 2 C.F.R. Part 1000 and as set forth in the Assistance Listing for ARP/CSLFRF (21.027). These requirements dictate how SUBRECIPIENT must administer the Subaward and how MDEQ must oversee SUBRECIPIENT. As a condition of receipt of the grant funds authorized in this Agreement, SUBRECIPIENT agrees to watch the video entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview" found at <https://www.mswaterinfrastructure.com>.

The applicable UG provisions are as follows:

- Subpart A, Acronyms and Definitions;
- Subpart B, General Provisions;
- Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards (except 2 C.F.R. §§ 200.204, .205, .210, and .213);
- Subpart D, Post Federal Award Requirements (except 2 C.F.R. §§ 200.305(b)(8) and (9), .308, .309, and .320(c)(4));
- Subpart E, Cost Principles;
- Subpart F, Audit Requirements;
- 2 C.F.R. Part 25 (Universal Identifier and System for Award Management);
- 2 C.F.R. Part 170 (Reporting Subaward and Executive Compensation Information); and
- 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)).

SUBRECIPIENT shall document compliance with UG requirements, including adoption and implementation of all required policies and procedures, within thirty (30) days of the execution of this Agreement and during all subsequent reviews during the term of the Agreement. It is SUBRECIPIENT's responsibility to comply with all UG requirements. Failure to do so may result in termination of the Agreement by MDEQ.

All real property acquired or improved, and equipment or supplies purchased in whole or in part with MCWI Grant Funds and/or LFRF, must be used, insured, managed, and disposed of in accordance with 2 C.F.R. § 200.311 through 2 C.F.R. § 200.316.



## 19. SUBAWARDS

If SUBRECIPIENT is authorized by MDEQ to make a Subaward, SUBRECIPIENT must include and incorporate the terms and conditions of this Agreement and any attachments, in all lower tier Subawards. Further, SUBRECIPIENT, who makes a Subaward, must follow and carry out all the responsibilities of a Pass-through entity described at 2 C.F.R. Part 200.

## 20. COMPLIANCE WITH LAWS

SUBRECIPIENT understands that MDEQ is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and SUBRECIPIENT agrees during the Period of Performance of the Agreement that SUBRECIPIENT will strictly adhere to this policy in its employment practices and work performance under this Agreement. SUBRECIPIENT shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified.

SUBRECIPIENT along with any sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d *et seq.*, as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement. Further, SUBRECIPIENT agrees to comply with the provisions of Attachment D to this Agreement.

Nothing contained in this Agreement may be deemed or construed in any way to stop, limit, or impair MDEQ from exercising or performing any regulatory, legislative, governmental, or other powers or functions.

SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under ARPA, including the information provided by the State and Local Fiscal Recovery Fund Final Rule.<sup>2</sup>

SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under the Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022 (Miss. Code Ann. § 49-2-131).<sup>3</sup>

<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>

<sup>3</sup> <http://billstatus.ls.state.ms.us/documents/2023/pdf/SB/2400-2499/SB2444SG.pdf>

SUBRECIPIENT is required to review and understand the requirements, limitations and restrictions placed upon them under the Regulations promulgated by MDEQ.<sup>4</sup>

21. **STOP WORK ORDER**

A. *Order to Stop Work:* MDEQ may, by written order to SUBRECIPIENT at any time and without notice to any surety, require SUBRECIPIENT to stop all or any part of the Work called for by this Agreement. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to SUBRECIPIENT, 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, SUBRECIPIENT shall forthwith comply with its terms and take all reasonable 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, MDEQ shall either:

- i. cancel the stop work order; or
- ii. terminate the Work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this Agreement.

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, SUBRECIPIENT shall have the right to resume Work. An appropriate adjustment may be made in the Period of Performance or Maximum Amount, or both, and the Agreement shall be modified in writing accordingly if:

- i. The stop work order results in an increase in the time required for, or in SUBRECIPIENT's cost properly allocable to, the performance of any part of this Agreement; and
- ii. SUBRECIPIENT provides a written claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that MDEQ decides that the facts justify such action and any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

C. *Termination of Stopped Work:* If a stop work order is not canceled and the Work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order may be allowed by adjustment or otherwise.

22. **E-PAYMENT**

SUBRECIPIENT agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. MDEQ agrees to make payment in

<sup>4</sup> <https://mswaterinfrastructure.com/wp-content/uploads/2022/07/MCWI-Grant-Program-Regulations-revised-12-16-22.pdf>



accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305.

### 23. INTERVENTIONS

If MDEQ determines that SUBRECIPIENT is not in compliance with this Agreement, MDEQ may initiate an intervention, in accordance with 2 C.F.R. § 200.208 and 2 C.F.R. § 200.339. The degree of SUBRECIPIENT’s performance or compliance deficiency will determine the degree of intervention. All possible interventions are listed below and will depend on the degree of deficiency in SUBRECIPIENT’s performance or compliance deficiency.

If MDEQ determines that an intervention is warranted, it shall provide written notice to SUBRECIPIENT of the intervention within thirty (30) days of the completion of a report review, desk review, onsite review, audit review, or procedures engagement review, or as soon as possible after MDEQ otherwise learns of a compliance or performance deficiency related to the execution of this Agreement. The written notice shall notify SUBRECIPIENT of the following related to the intervention:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the action needed to remove the additional requirement, if applicable;
- (4) The time allowed for completing the actions if applicable; and
- (5) The method for requesting reconsideration of the additional requirements imposed.

MDEQ may impose, but is not limited to, the following interventions on SUBRECIPIENT, based on the level of the compliance or performance deficiency that MDEQ determines:

**Level 1 Interventions.** These interventions may be required for minor compliance or performance issues:

- (1) SUBRECIPIENT addresses specific internal control, documentation, financial management, compliance, or performance issues within a specified time period; and/or
- (2) More frequent or more thorough reporting by the SUBRECIPIENT; and/or
- (3) More frequent monitoring by MDEQ; and/or
- (4) Required SUBRECIPIENT technical assistance or training.

**Level 2 Interventions.** These interventions may be required for more serious compliance or performance issues:

- (1) Restrictions on funding payment requests by SUBRECIPIENT; and/or
- (2) Disallowing payments to SUBRECIPIENT; and/or
- (3) Requiring repayment for disallowed cost items; and/or
- (4) Imposing probationary status on SUBRECIPIENT.

**Level 3 Interventions.** These interventions may be required for significant and/or persistent compliance or performance issues:



- (1) Temporary or indefinite funding suspension to SUBRECIPIENT; and/or
- (2) Nonrenewal of funding to SUBRECIPIENT in subsequent year; and/or
- (3) Terminate funding to SUBRECIPIENT in the current year; and/or
- (4) Initiate legal action against SUBRECIPIENT.

Interventions will remain in place until the underlying performance or compliance deficiency is addressed to the sole satisfaction of MDEQ.

#### 24. **E-VERIFICATION**

If applicable, SUBRECIPIENT represents and certifies that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1, *et seq.* The term “employee” as used herein means any person that is hired to perform work within the State. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. SUBRECIPIENT agrees to maintain records of such compliance. Upon request of the State of Mississippi and after approval of the Social Security Administration or Department of Homeland Security, when required, SUBRECIPIENT agrees to provide a copy of each such verification. SUBRECIPIENT further represents and certifies that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws.

#### 25. **TRANSPARENCY**

This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983” and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this Agreement is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Agreement may be posted to the Department of Finance and Administration’s independent agency Agreement website for public access at <https://www.transparency.mississippi.gov>. Information identified by SUBRECIPIENT as trade secrets or other proprietary information, including confidential vendor information, or any other information which is required to be confidential by state or federal law or outside the applicable freedom of information statutes will be redacted.

#### 26. **PAYMODE**

Payments by state agencies using the statewide accounting system shall be made and remittance information provided electronically as directed by MDEQ. These payments shall be deposited into the bank account of SUBRECIPIENT’s choice. MDEQ may, at its sole discretion, require SUBRECIPIENT to submit invoices and supporting documentation electronically at any time during the Period of Performance of this Agreement. SUBRECIPIENT understands and

agrees that MDEQ is exempt from the payment of taxes. All payments shall be in United States currency.

## 27. **TERMINATION**

The Agreement may be terminated as follows:

### A. *Termination For Convenience.*

The MDEQ may, when the interests of the State so require, terminate this Agreement in whole or in part, for the convenience of the State. MDEQ shall give written notice of the termination to SUBRECIPIENT specifying the part of the Agreement terminated and when termination becomes effective.

### B. *Termination For Default.*

If SUBRECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof or otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUBRECIPIENT in writing of the delay or nonperformance, and if not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may terminate SUBRECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUBRECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUBRECIPIENT in which the State has an interest.

### C. *Termination Upon Bankruptcy.*

This Agreement may be terminated in whole or in part by MDEQ upon written notice to SUBRECIPIENT, if SUBRECIPIENT should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by SUBRECIPIENT of an assignment for the benefit of its creditors. In the event of such termination, SUBRECIPIENT shall be entitled to recover just and equitable compensation for satisfactory Work performed under this Agreement, but in no case shall said compensation exceed the total Maximum Amount.

## 28. **DISPUTES**

Before pleading to any judicial system at any level, SUBRECIPIENT must exhaust all administrative remedies. A written complaint must first be sent to the Executive Director of MDEQ. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to SUBRECIPIENT within fourteen (14) days after receipt of information



requested by MDEQ or the Executive Director. If the decision of the Executive Director does not resolve the matter, successive administrative remedies may, at SUBRECIPIENT's option, include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Miss. Code Ann. §§ 49-17-35 and -41. In the alternative, at SUBRECIPIENT's option, the decision of the Executive Director may be deemed the final agency action on the complaint. Appeals from the decision of the Executive Director or the Commission shall follow procedures outlined in Miss. Code Ann. § 49-17-41.

29. **ANTI-ASSIGNMENT/CONTRACTING**

SUBRECIPIENT shall not assign, contract, or otherwise transfer this Agreement, in whole or in part without the prior written consent of MDEQ, which MDEQ may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MDEQ of any contract shall be deemed in any way to provide for the incurrence of any obligation of MDEQ in excess of the Maximum MCWI Grant Fund amount set forth in this Agreement, nor create any contractual relationship between MDEQ and any Contracted Parties. Contracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that MDEQ may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the Parties.

30. **AUTHORITY TO PARTICIPATE IN THIS AGREEMENT**

SUBRECIPIENT certifies and acknowledges it is a Mississippi county, municipality or public utility, as defined in MCWI regulation, Rule 1.1. E. (17), and that it has LFRF to use as match funding for this grant. SUBRECIPIENT further certifies and acknowledges that its entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

31. **DEBARMENT AND SUSPENSION**

SUBRECIPIENT certifies to the best of its knowledge and belief, that it, and its Contracted Parties:

A. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. have not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it 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 Agreement or Contract under a public transaction;

C. have not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for a 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;

D. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in Article 31. B. and Article 31. C., above; and

E. have not, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

### 32. **FAILURE TO ENFORCE**

Failure by MDEQ, at any time, to enforce the provisions of this Agreement shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of this Agreement or any part thereof or the right of MDEQ to enforce any provision at any time in accordance with its terms.

### 33. **INDEMNIFICATION**

SUBRECIPIENT agrees to maintain responsibility for the Project and agrees to provide proper operation and maintenance of all facilities for the life of the Project. SUBRECIPIENT's tort liability, if it is an entity of the State of Mississippi, is determined and controlled in accordance with Miss. Code Ann. §§ 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering this liability or of eliminating any defense available to the State under statute.

To the extent allowed by state law, SUBRECIPIENT agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and MDEQ's contractors from and against any and all claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of SUBRECIPIENT, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

### 34. **SUBRECIPIENT STATUS**

SUBRECIPIENT shall, during the entire Period of Performance of this Agreement, be construed to be an independent SUBRECIPIENT. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship or a joint venture relationship.

SUBRECIPIENT represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who are qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of MDEQ.

Any person assigned by SUBRECIPIENT to perform the services hereunder shall be an employee or independent contractor of SUBRECIPIENT, who shall have the sole right to hire and discharge its employees and/or independent contractors under this Agreement.

SUBRECIPIENT shall pay, when due, all salaries and wages of its employees and accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. This provision is solely for the benefit of MDEQ, and nothing herein shall be construed to create or impose any contractual or agency relationship between MDEQ and SUBRECIPIENT'S contractors, subcontractors, employees or agents.

35. **INSURANCE**

SUBRECIPIENT and its Contracted Parties agree to and shall maintain insurance that is required by applicable state, federal, and local laws and regulations.

36. **ENTIRE AGREEMENT**

This Agreement, including all attachments, represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This Agreement may be altered, amended, or modified only by a written document executed by MDEQ and SUBRECIPIENT. SUBRECIPIENT acknowledges that it has thoroughly read this Agreement and all its attachments and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein.

37. **ORAL STATEMENTS**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. All modifications to the Agreement must be made in writing by the MDEQ and agreed to by SUBRECIPIENT.

38. **RECORD RETENTION AND ACCESS TO RECORDS**

Provided SUBRECIPIENT is given reasonable advance written notice and such inspection is made during normal business hours of SUBRECIPIENT, the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of SUBRECIPIENT's books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the SUBRECIPIENT's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by SUBRECIPIENT for a minimum of ten (10) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

SUBRECIPIENT is not required to retain the above-mentioned records for the ten-year period prescribed in this Article and Article 39 only if all of the following conditions are satisfied:



A. SUBRECIPIENT has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;

B. No audit, litigation or other action arising out of or related in any way to this Project is commenced before SUBRECIPIENT provides the records and corresponding certification to MDEQ, in which case, SUBRECIPIENT shall retain the records until all issues arising out of the action are finally resolved; and

C. SUBRECIPIENT provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

39. **RIGHT TO AUDIT**

SUBRECIPIENT shall maintain all financial records, including electronic financial records, as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. SUBRECIPIENT shall retain these records for a period of ten (10) years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten (10) year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General. If any litigation, claim, investigation, or audit relating to this Agreement or an activity funded under the Agreement is started before the expiration of the ten (10) year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

40. **RIGHT TO INSPECT WORK; ACCESS**

MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Notwithstanding any review or inspection by MDEQ and their representatives, invitees, and consultants, SUBRECIPIENT shall not be relieved of its responsibility for performance of the Work or the submission of reports as expressly set forth in this Agreement solely by virtue of such inspection or review of the Work. SUBRECIPIENT shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to SUBRECIPIENT's performance of the Work.

41. **SEVERABILITY**

If any part of this Agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the Parties shall amend the Agreement as necessary to reflect the original intent of the Parties and to bring any invalid or unenforceable provisions in compliance with applicable law.



42. **THIRD PARTY ACTION NOTIFICATION**

SUBRECIPIENT shall give the MDEQ prompt notice in writing of any action or suit filed, and prompt notice of any claim made against SUBRECIPIENT by any entity that may result in litigation related in any way to this Agreement.

43. **CERTIFICATIONS**

SUBRECIPIENT's execution of this Agreement shall be deemed as acknowledgement, guarantee and certification by SUBRECIPIENT of the following:

A. SUBRECIPIENT has sufficient LFRF in its possession that it will use to match MCWI Grant Funds.

B. SUBRECIPIENT will follow and abide by all ARPA guidelines, guidance, rules, regulations, and other criteria, as may be amended from time to time, by the U.S. Treasury regarding the use of monies under this Agreement.

C. As required in Attachment A, Article (1) a., SUBRECIPIENT's Authorized Representative, or his/her designee has watched the video on the MDEQ <https://www.mswaterinfrastructure.com> web-page entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview."

D. All of SUBRECIPIENT's LFRF used as MCWI matching funds, as well as MCWI Grant Funds received by SUBRECIPIENT, have been or will be used for the Project detailed in this Agreement.

E. Upon request by MDEQ, SUBRECIPIENT will provide an Intergovernmental Review Certification as detailed in the MCWI Regulations.

F. SUBRECIPIENT will obligate all MCWI Grant Funds and LFRF funds used for MCWI matching funds by 11:59 p.m. on August 30, 2024.

G. If SUBRECIPIENT does not complete the Project by December 31, 2026, SUBRECIPIENT acknowledges and agrees to complete the Project with other funds.

44. **WAIVER**

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

45. **COMPLIANCE WITH MISS. CODE ANN. § 31-5-37**

If applicable, SUBRECIPIENT shall ensure that Contracted Parties and bidders solicited for contract awards pursuant to this Agreement comply with the requirements of Miss. Code. Ann. § 31-5-37. SUBRECIPIENT shall require all bidders for any contract of Five Thousand Dollars (\$5,000.00) or more procured or to be procured with funds received pursuant to this Agreement to submit a certification with their bid that said bidder will comply with the provisions of Miss. Code. Ann. § 31-5-37. In addition, within seven (7) days of any such contract award procured or to be procured with funds received pursuant to this Agreement, SUBRECIPIENT shall require the Contracted Party to submit to both SUBRECIPIENT and the Mississippi Department of Employment Security ("MDES") an employment plan which conforms to the requirements contained in Miss. Code. Ann. § 31-5-37(2).

From the date written notice of any such contract award is received and until ten (10) business days after the receipt of the employment plan by MDES, the Contracted Party and any subcontractors shall not hire any personnel to fill vacant positions for the project except residents of the State of Mississippi who are to be verified by MDES and/or those qualified individuals who are submitted by MDES. However, the Contracting Party or contractor is authorized to employ Mississippi residents to begin work immediately if such persons are verified by MDES after employment by the Contracting Party or contractor. SUBRECIPIENT shall vacate the contract award in the event the Contracting Party fails to comply with the provisions of Miss. Code Ann. § 31-5-37.

46. **CONFLICT OF INTEREST**

SUBRECIPIENT shall immediately notify MDEQ in writing of any potential conflict of interest resulting from the representation of or service to other clients or otherwise affecting this Agreement in any way. If any such conflict occurs before it is discovered, SUBRECIPIENT shall notify MDEQ of such conflict within five (5) working days of such discovery. If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this Agreement per the "Termination for Convenience" clause.

47. **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and permitted assigns.

48. **NO THIRD-PARTY BENEFICIARIES**

This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

49. **EVALUATION**

SUBRECIPIENT agrees to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project(s) to which the Agreement relates, and to provide



in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, SUBRECIPIENT agrees to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.

50. **VENUE**

Venue for the resolution of any dispute, according to Article 28 of this Agreement, shall be before the Mississippi Commission on Environmental Quality if pursuing an administrative appeal, and venue for any subsequent litigation shall be in the Chancery Court of Hinds County, Mississippi.

51. **HEADINGS**

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

52. **NOTICES**

Unless otherwise specified in the Agreement, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of document(s) (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this subsection):

If to MDEQ:	Attention: MCWI Contract Administration 515 East Amite Street P.O. Box 2249 Jackson, MS 39201 E-mail: MCWIdocuments@mdeq.ms.gov
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If to SUBRECIPIENT:	Attention: Jon McCraw 5000 Diamondhead Circle Diamondhead, MS 39525 Phone: (228) 222-4626 E-mail: jmccraw@diamondhead.ms.gov
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53. **COUNTERPARTS**

Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

For the faithful performance and consideration provided under the terms of this Agreement, the Parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
Chris Wells  
Executive Director

\_\_\_\_\_  
Date

**CITY OF DIAMONDHEAD**

\_\_\_\_\_  
Mayor Nancy Depreo  
Signature of Authorized Representative

\_\_\_\_\_  
Nancy Depreo  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## ATTACHMENT A

### PROJECT NAME, SCOPE OF WORK AND PROJECT TIMELINE AND REQUIREMENTS

#### PROJECT NAME

**Hilo Way Drainage Improvements**

#### SCOPE OF WORK

The Project shall be defined as eligible activities funded in whole or in part under this Agreement as follows:

The Project includes removal and replacement of driveway culverts and associated appurtenances along Hilo Way.

The general Scope of Work to be performed by SUBRECIPIENT is limited to that which was submitted in the MCWI Application Portal and approved for funding in accordance with the MCWI Program Regulations. SUBRECIPIENT hereby agrees that no additional eligible scope may be added to this Scope of Work without the express written consent of MDEQ. The Scope of Work eligible for reimbursement is limited to that identified as eligible by MDEQ and further described by plans, specifications, contract documents, and contract change orders approved as eligible by MDEQ.

#### PROJECT TIMELINE AND REQUIREMENTS

(1) SUBRECIPIENT agrees to the following schedule.

- a. Within 10 days of execution of this Agreement, SUBRECIPIENT's Authorized Representative, or his/her designee shall watch the video on the MDEQ <https://www.mswaterinfrastructure.com> web-page entitled "American Rescue Plan Act State & Local Fiscal Recovery Funds, Procurement Overview." The web-page will track compliance with this requirement;
- b. Within 15 days of execution of this Agreement, submit a complete set of plans, specifications, contract documents on each construction contract, and all applicable permits and agency approvals, if not already submitted to MDEQ;
- c. Within 15 days of execution of this Agreement, advertise each construction contract for bids, if not already advertised;
- d. No later than 45 days after advertisement for construction bids on each construction contract, receive bids;



- e. No later than 60 days after receipt of bids on each construction contract, execute construction contract;
- f. No later than 15 days after execution of construction contract, submit the entire procurement file (including but not limited to the request for proposals, evidence of publication, MBE/WBE documentation, all received bids, evaluation and selection documentation, executed construction contracts, and professional services contracts);
- g. No later than 60 days after execution of each construction contract, execute and submit a copy of the notice to proceed;
- h. No later than 5 business days after the estimated completion of 25% of construction, submit a notice to MDEQ of such milestone;
- i. No later than 5 business days after the estimated completion of 50% of construction, submit a notice to MDEQ of such milestone;
- j. No later than 5 business days after the estimated completion of 75% of construction, submit a notice to MDEQ of such milestone;
- k. No later than 5 business days after completion of each construction contract, notify MDEQ of construction completion;
- l. No later than 30 days after the contract completion date on each construction contract, submit all change orders which include time extensions, or a request and justification for delaying MDEQ's final construction observation;
- m. Within 45 days of Project completion, but no later than September 30, 2026, whichever is earlier, unless an extension of this date is specifically authorized by MDEQ, SUBRECIPIENT must submit the following: Final Report, as listed in Article 11, the engineer's certification of compliance with plans, specifications, and contract documents; final professional services contract amendments, if any; and all other administrative forms and documents required by the Agreement.

(2) To the extent any documents required to be submitted in Attachment A, Article (1) above were submitted with the MCWI Grant Application through the Application Portal, the documents do not need to be resubmitted.

(3) All documents required to be submitted in Attachment A, Article (1) above, shall be uploaded to the Documents Portal at <https://www.mswaterinfrastructure.com>.

**ATTACHMENT B****SYSTEMS AND PROCESSES FOR FINANCIAL MANAGEMENT  
RECOMMENDATIONS AND/OR CORRECTIVE ACTION PLAN**

An evaluation for the assessment of uncontrolled risks of the SUBRECIPIENT's systems and processes for financial management was performed as of part of the initial subaward process by MDEQ, acting on behalf of the State of Mississippi, as administrator of this Subaward Agreement. MDEQ requests the SUBRECIPIENT provide the following information to MDEQ as part of observations made during the evaluation. MDEQ reserves the right to re-evaluate the assessment of uncontrolled risks upon subsequently identified facts:

1. SUBRECIPIENT agrees to provide MDEQ with a copy of their annual audited financial statements within 60 days of the report release date throughout the Period of Performance.
2. SUBRECIPIENT agrees to promptly notify MDEQ of any significant changes made to the SUBRECIPIENT's current policies and procedures that would impact financial management systems and processes, specifically those communicated as part of the evaluation, from which the current residual risk levels were derived.
3. SUBRECIPIENT agrees to promptly notify MDEQ of any level of fraud or abuse discovered within the organization without regard to materiality that is related to the operation of the Project, as well as other pervasive deficiencies identified for grant management practices from any source, both external and internal, throughout the program performance period.
4. If deficiencies, significant deficiencies and/or material weaknesses are reported to the SUBRECIPIENT, as part of any assurance, attestation, or monitoring engagement during the program performance period, SUBRECIPIENT agrees to provide its response(s) and/or corrective action plan(s) to MDEQ so that prompt action can be taken by MDEQ to mitigate any elevated level of uncontrolled risk that could potentially impact MDEQ's or the SUBRECIPIENT's ability to comply with Federal Award and/or subaward requirements.
5. SUBRECIPIENT agrees that MDEQ has the right to perform monitoring procedures as deemed appropriate by MDEQ based on the assessed risk of noncompliance.

## ATTACHMENT C

### SUBAWARD TERMS AND CONDITIONS FOR CONTRACTED PARTIES

#### 1. AUTHORITY TO PARTICIPATE IN THIS AGREEMENT

The Contracted Party certifies that (a) it is either a 1) state agency, 2) a validly organized business that is authorized to do business in the state of Mississippi, 3) a nongovernmental organization, or 4) a political subdivision of the state of Mississippi with valid authority to enter into this agreement and; (b) entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (c) notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

#### 2. DEBARMENT AND SUSPENSION

Contractor/Contracted Parties certifies to the best of its knowledge and belief, that it:

A. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it 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;

C. has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for a 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;

D. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in Article 2.B. and Article 2.C., above; and,

E. has not, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

This agreement is subject to 31 C.F.R. Part 19.

#### 3. INDEMNIFICATION

To the extent allowed by state law, Contracted Party agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and the Department's contractors from and against any and all



claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of any Contracted Party, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

#### 4. **RELATIONSHIP STATUS**

The Contracted Party acknowledges and agrees that MDEQ is not a party, in any manner whatsoever, to any contract between the SUBRECIPIENT and the construction contractor(s), engineer(s), attorney(s), equipment supplier(s), contractor(s), or between any other parties of any kind whatsoever (hereinafter collectively referred to as "vendor"). The SUBRECIPIENT and Contracted Party also acknowledge and agree that any benefit to vendors contracting with the SUBRECIPIENT or Contracted Parties arising from or associated with this Agreement is strictly incidental and all such vendors are not and are not intended to be considered as third-party beneficiaries under any agreement between MDEQ and the SUBRECIPIENT.

Upon execution of any contract between the SUBRECIPIENT and any other party in regard to the project, MDEQ does not assume any authorities, duties, responsibilities, or liabilities under such contract. The SUBRECIPIENT and Contracted Party shall not have any authority to bind or otherwise obligate MDEQ, directly or indirectly, under any contract or agreement between the SUBRECIPIENT and any other party. The SUBRECIPIENT, Contracted Party and its vendors acknowledge and agree that any action taken by MDEQ in its role of grantor, or in its separate and distinct role as regulator shall not in any way change or alter its position as that of grantor.

MDEQ does not have any authority, duty, responsibility, or liability in contract claims or dispute identification, negotiation, resolution, or any other actions regarding contract claims under the contract(s) between the SUBRECIPIENT and any other party. The SUBRECIPIENT and the Contracted Party acknowledge and agree that MDEQ is not obligated to review, comment on, approve, or discuss the merits of any contract claims presented by or to any party. Any MDEQ reviews, approvals, observations, presence at meetings, written communications, verbal communications or other actions are not to be interpreted as addressing the merits of any claims, nor are they to be construed as interpreting the contract between the SUBRECIPIENT and the Contracted Party or any other parties.

#### 5. **ACCESS TO RECORDS**

Provided Contracted Party is given reasonable advance written notice and such inspection is made during normal business hours of Contracted Party, then the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contracted Party's books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the Contracted Party's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by Contracted Party for a minimum of ten (10) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the

records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

Contracted Party is not required to retain the above-mentioned records for the ten (10) year period prescribed in this Section and the "Right to Audit" provision only if all of the following conditions are satisfied:

- A. Contracted Party has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;
- B. No audit, litigation or other action arising out of or related in any way to this Project is commenced before Contracted Party provides the records and corresponding certification to MDEQ, in which case, Contracted Party shall retain the records until all issues arising out of the action are finally resolved; and
- C. Contracted Party provides MDEQ a minimum of thirty (30) days written notice before providing the above-mentioned records and corresponding certification.

#### **6. RECORD RETENTION AND RIGHT TO AUDIT**

The Contracted Party shall maintain and retain books, documents, papers, financial records and other records, including electronic records, as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. Contracted Party shall retain these records for a period of ten (10) years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten (10) year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General. If any litigation, claim, investigation, or audit relating to this Agreement or an activity funded under the Agreement is started before the expiration of the ten (10) year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

#### **7. RIGHT TO INSPECT WORK; SITE ACCESS**

MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Upon request by MDEQ, Contracted Party shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to the performance of the Work.

#### **8. CONFLICT OF INTEREST**

The Contracted Party covenants that he presently has no interest and shall not acquire any interest direct or indirect in the Project that is the subject to this Agreement or any parcels therein, where applicable, or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contracted Party further covenants that, in the performance of this agreement, no person having any such interest shall be employed.



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

#### **9. COOPERATION AND EVALUATION**

The Contracted Party agrees to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project(s) to which the Agreement relates, and to provide in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, the Contracted Party agrees to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.



## ATTACHMENT D

### ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

#### ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, SUBRECIPIENT provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to SUBRECIPIENT's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that SUBRECIPIENT may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of SUBRECIPIENT's program(s) and activity(ies), so long as any portion of SUBRECIPIENT's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. SUBRECIPIENT ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. SUBRECIPIENT acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). SUBRECIPIENT understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, SUBRECIPIENT shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. SUBRECIPIENT understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in SUBRECIPIENT's programs, services, and activities.

3. SUBRECIPIENT agrees to consider the need for language services for LEP persons when SUBRECIPIENT develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. SUBRECIPIENT acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon SUBRECIPIENT and SUBRECIPIENT's successors, transferees, and assignees for the period in which such assistance is provided.

5. SUBRECIPIENT understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates SUBRECIPIENT, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates SUBRECIPIENT for the period during which it retains ownership or possession of the property.

6. SUBRECIPIENT shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. SUBRECIPIENT shall comply with information requests, on-site compliance reviews and reporting requirements.

7. SUBRECIPIENT shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. SUBRECIPIENT also must inform the Department of the Treasury if SUBRECIPIENT has received no complaints under Title VI.

8. SUBRECIPIENT must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the SUBRECIPIENT and the administrative agency that made the finding. If SUBRECIPIENT settles a case or matter alleging such discrimination, SUBRECIPIENT must provide documentation of the settlement. If SUBRECIPIENT has not been the subject of any court or administrative agency finding of discrimination, please so state.



**EXHIBIT "C"****WORK ASSIGNMENT  
WORK ASSIGNMENT NO 22****PROJECT NUMBER: - Support for Makiki Dr Project**

This Work Assignment is executed in accordance with the Master Services Agreement entered into by the City of Diamondhead, Mississippi and Covington Civil and Environmental, LLC on the 29<sup>th</sup> day of October 2021.

WHEREAS, each of said parties represents that it continues to have authority to execute this Work Assignment and that all certifications previously made in said Agreement remain in effect;

NOW THEREFORE, the parties hereto do further contract and agree to add the following items of work to the above Agreement under the additional terms and conditions as are hereinafter stated:

*SPECIFIC SCOPE OF WORK FOR THIS WORK ASSIGNMENT OR  
PHASE*

During the construction of the Makiki Dr Drainage project, a Diamondhead Water and Sewer District (DWSD) water main was removed. Since this project was not completed, the water line requires reconnection to restore full operation of the DWSD system while the issues which disrupted construction on the Makiki Dr Drainage project are resolved by the City.

1. Topographic Survey – Covington will provide a topographic survey of the project area to determine if the project was constructed properly and inform the re-design of components necessary to complete the project.
2. Plans and/or Specifications will be prepared to address the water main installation and reconnection. Plans and/or Specifications will be prepared using DWSD standards. Additionally, a bid form for quotation will be furnished with the final deliverable.
3. Plans and/or Specifications will be prepared to address the remaining work to install the drainage structures and re-open the roadway. Additionally, a bid form for quotation will be furnished with the final deliverable.
4. Covington will provide construction phase services on the project to include periodic site visits, reviewing invoices and reviewing submittals. This work will be completed on a hourly basis.

Scope of work does not include bidding services as this work is expected to be completed using quotes.



Covington will provide these services based on the following fee schedule:

- Task 1: Lump Sum Fee - \$7,000.00
- Task 2: Lump Sum Fee - \$5,000.00
- Task 3: Lump Sum Fee - \$6,000.00
- Task 4: Hourly Not to Exceed - \$5,000.00

Total not to exceed: \$23,000.00

**WORK ASSIGNMENT TERM** [No new Work Assignments shall be executed after *October 28, 2024.*]

This WORK ASSIGNMENT shall be effective upon the latest date of execution hereof and continue until *February 28, 2023*, at 11:59 P.M. CDT.

**DBEGOAL**

*The DBE goal established for this Work Assignment shall be 0 %*

**KEY PERSONNEL**

CITY

\_\_\_\_\_  
Jon McCraw, City Manager

CONSULTANT PROJECT  
MANAGER: (Certified as a  
Professional Engineer to do  
business in the State of Mississippi)



Ben Benvenuti, P.E., Principal Engineer

**MAXIMUM ALLOWABLE COST**

Contract Maximums:

Under no circumstances shall the amount payable by the City for this assignment exceed \$ 23,000.00 (Total of all Charges) without the prior written consent of both parties.


Both parties hereto represent that they have authority to enter into Work Assignment No. 22, as "Exhibit C" of the Agreement executed by and between the City and Engineer to which is now made a part of said Agreement.

SO EXECUTED AND AGREED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ -

City of Diamondhead

\_\_\_\_\_  
Signature

Covington Civil and Environmental

  
\_\_\_\_\_  
Signature

**ADVERTISEMENT FOR BIDS  
CITY OF DIAMONDHEAD  
NOMA DRIVE IMPROVEMENTS**

**General Notice**

City of Diamondhead (Owner) is requesting Bids for the construction of the following Project:

**Noma Drive Improvements  
City of Diamondhead  
Project Number 16383.08.02**

Bids for the construction of the Project will be received at the Diamondhead City Hall located at 5000 Diamondhead Circle, Diamondhead, MS 39525, until **Friday, July 28, 2023, at 10:00 a.m. local time**. At that time the Bids received will be publicly opened and read.

The Project includes the following Work:

The project includes, but is not limited to, road improvements including removal and repair as well as asphalt overlay to Noma Drive including the construction of the multimodal pathway from City Hall to the Noma Drive roundabout.

The maximum allowable number of consecutive calendar days for the completion of Work (the Contract Time) is set forth in the Bid Proposal and will be included in the executed Agreement. The project will be subject to liquidated damages in the amount of One Thousand Dollars (\$1,000) per consecutive calendar day for each day in default after the stipulated completion date. The contract time will begin when the Contractor commences work on this project but no later than the tenth consecutive calendar day after receipt of a notice to proceed from the Owner.

**Obtaining the Bidding Documents**

Copies of the contract documents, including Drawings and Technical Specifications, are on file and may be examined without charge at the following locations:

Covington Civil & Environmental	City of Diamondhead	<a href="http://www.diamondheadbids.com">www.diamondheadbids.com</a>
2300 14 <sup>th</sup> Street	5000 Diamondhead Circle	(log-in/registration required)
Gulfport, MS 39501	Diamondhead, Mississippi 39525	

Plans and Specifications are being made available via hard copy or digital download. Plan Holders are required to log-in or register for an account to view or order bid documents at [www.diamondheadbids.com](http://www.diamondheadbids.com). Bid documents are non-refundable and must be purchased through the website. Questions regarding website registration and online orders, please contact Plan House at 228-248-0181. No partial sets of drawings of project manuals will be issued. No contract documents (hard copies or electronic copies) will be issued to Contractors within twenty-four (24) hours of the time indicated above for receiving bids.

Bids must be submitted upon the standard forms contained within these contract documents furnished by the Engineer for the City of Diamondhead, Mississippi, noted in the Instructions to Bidders. Bids submitted shall be in letter form in a sealed envelope and outside of envelope shall be marked plainly Noma Drive Improvements and shall be addressed to Jeannie Klein, City Clerk, City of Diamondhead at 5000 Diamondhead Circle, Diamondhead, Mississippi 39525 or for those interested, bids can be electronically submitted at [www.diamondheadbids.com](http://www.diamondheadbids.com) under the project page. No oral, telegraphic, telephonic, or e-mail proposals will be considered. Each bidder shall write his Name, his Address, and his



Certificate of Responsibility number/or a statement that the bid enclosed does not exceed Fifty Thousand Dollars (\$50,000) on the outside of the sealed envelope containing the proposal. If submitting electronically, please include this information on a cover page with your bid submission. All interpretations of drawings and specifications shall be directed to Covington Civil & Environmental, Sarah McLellan, P.E. 228-396-0486 or email [sarah@ccellc.us](mailto:sarah@ccellc.us). All questions regarding this bid must be submitted in writing and must be received by the end of business **5:00 p.m. local time July 20, 2023**. Questions submitted after this date will not be considered. An acknowledged received copy of all Addenda issued by the Engineer via Plan House must be included with the bid proposal.

### **Pre-bid Conference**

A pre-bid conference for the Project will be held on **Thursday, July 13, 2023, at 10:00 AM** at Diamondhead City Hall, 5000 Diamondhead Circle, Diamondhead, MS 39525. Attendance at the pre-bid conference is encouraged but not required.

### **Instructions to Bidders**

Each bid must be accompanied by a Bid Bond or Certified Check in an amount equal to five percent (5%) of his Base Bid, payable to the City of Diamondhead, Mississippi, as bid security. In the event that an electronic bid is submitted, a copy of the bid bond must be included with the submission. If submitting electronically, a hard copy of all bid documents must be provided within 3 business days if requested after the bid opening. The successful bidder shall furnish a Performance Bond and a Payment Bond each in the amount of 100% of the bid. All non-resident requirements shall be met.

The City of Diamondhead, Mississippi, reserves the right to reject any and all bids and to waive any informality in the bidding. Bids may be held by the City of Diamondhead, Mississippi, for a period not to exceed sixty (60) days from the date of the opening of bids for the purpose of reviewing the bids and investigating the qualifications of Bidders, prior to awarding of the contract.

The project is funded by Gulf Coast Restoration Fund Grant Program and the requirements for this grant including the procurement process shall be followed including opportunity for participation by minority and women-owned business enterprises in the procurement of goods and services.

For all further requirements regarding bid submittal, qualifications, procedures, and contract award, refer to the Instructions to Bidders that are included in the Bidding Documents.

### **This Advertisement is issued by:**

Owner: City of Diamondhead  
By: Jeannie Klein  
Title: City Clerk  
Date: 6/29/2023 & 7/06/2023



June 9, 2023

Mayor, Nancy Depreo  
City of Diamondhead  
5000 Diamondhead Circle,  
Diamondhead, MS 39525

RE: Noma Drive Waterfront Site, Utility and Drainage Improvements

Dear Mayor Depreo,

As you are aware, bids were received for the above referenced project on Friday, June 2, 2023. There were five (5) bids received and they were reviewed for inclusion of appropriate bidding documents. Attached is a certified bid tabulation indicating the breakdown of unit prices.

Bottom 2 Top Construction, LLC. was the apparent lowest and best bidder with a submitted total bid of \$345,964.22. Upon review of the bid, it is my opinion that Bottom 2 Top Construction, LLC. bid will be sufficient to successfully complete this project to the satisfaction of the City of Diamondhead.

We have discussed with Bottom 2 Top Construction, LLC the project details and scope of work. They are fully aware of the project requirements and are comfortable with the schedule for completion of the project. I recommend awarding the project to Bottom 2 Top Construction, LLC.

Please let me know if you have any questions regarding this matter.

Sincerely,

Jason Chiniche, P.E.

Enclosure



City of Diamondhead, MS

# Docket of Claims Register

Item No. 19.

APPKT02004 - 6.20.23 DOCKET

By Docket/Claim Number

Docket/Claim #	Vendor Name	Payable Date	Payable Number	Payable Description	Account Number	Account Name	Payment Amount Line Amount
DKT230799	AGJ	06/20/2023	MSP-104938	MONTHLY IT SUBSCRIPTIONS	001-140-605.00	Professional Fees - IT	2,365.28
					001-140-605.00	Professional Fees - IT	250.00
					001-140-605.00	Professional Fees - IT	2,019.78
					001-140-605.00	Professional Fees - IT	36.00
					001-140-605.00	Professional Fees - IT	59.50
DKT230800	Amazon com LLC	06/20/2023	1CWV-KYYT-FNNT 1RPR-Y1GD-CWV3	FOURTH OF JULY LEIS	001-653-650.00	Promotions	150.37
				AMS POCKET PENETROMETER	001-280-502.00	SMALL HAND TOOLS	99.58
							50.79
DKT230801	B&J PITT STOP LLC	06/20/2023	11-0187624	OIL CHANGE UNIT #340	001-200-635.00	Professional Fees - R&M Outside Services	117.45
			11-0187917	OIL CHANGE - UNIT #688	001-200-635.00	Professional Fees - R&M Outside Services	72.45
							45.00
DKT230802	BOXX MODULAR INC	06/20/2023	BXHS34142703	MODULAR RESTROOM BUILDING	158-000-917.00	Capital Outlay - Mobile Equipment	13,733.40
							13,733.40
DKT230803	CIVICPLUS, LLC	06/20/2023	265222	PREMIUM WEB OPEN ANNUAL	001-140-605.00	Professional Fees - IT	3,470.00
							3,470.00
DKT230804	Covington Civil and Environmental LLC	06/20/2023	16175.08-60	SITE DEVELOPMENT PLAN REVIEWS	001-280-602.00	Professional Fees - Engineering	78,216.30
			16175.08-61	STANDARD SPECIFICATIONS AND DRAWINGS	001-301-602.00	Professional Fees - Engineering	5,607.50
			16383.08-16	COMMERCIAL DISTRICT TRANSFORMATION PROJECT	161-653-602.00	Professional Fees - Engineering - Commercial Dist	7,000.00
					163-653-602.00	Professional Fees- Engineering	13,471.30
			16383.08-17		163-653-602.00	Professional Fees- Engineering	6,852.50
					161-653-602.00	Professional Fees - Engineering - Commercial Dist	28,027.92
					163-653-602.00	Professional Fees- Engineering	14,257.08
			16422.08-17	CITY ENGINEER SERVICES	001-301-601.00	Professional Fees - Consulting	3,000.00
DKT230805	Cspire Internet Service	06/20/2023	690858-46	INTERNET & PHONE RENTAL FOR THE MONTH OF MAY	001-140-612.00	Internet	640.73
							208.99
					001-140-643.00	Rent - Phone System	431.74



## Docket of Claims Register - Council

APPKT02004 -

Item No. 19.

Docket/Claim #	Vendor Name		Payable Description	Account Number	Account Name	Payment Amount	
	Payable Date	Payable Number				Line Amount	
DKT230806	Diamondhead True Value						322.02
	06/20/2023	A432077	SHOP KEYS	001-301-501.00	Supplies	32.99	
		A432100	STRAP WRENCH	001-301-502.00	Small Hand Tools	38.99	
		A432220	18X24 SAND BAG	001-301-575.00	Repairs & Maintenance-Streets/Drainage/Other	88.00	
		A432532	FUEL LINE FILTER - FA #351	001-301-571.00	Repairs & Maintenance - Equipment	10.99	
		A432747	L&G SPK PLUG	001-301-571.00	Repairs & Maintenance - Equipment	7.58	
		A432843	DUCT TAPE	001-301-571.00	Repairs & Maintenance - Equipment	10.99	
		A433612	HILLMAN ITEM	001-301-571.00	Repairs & Maintenance - Equipment	3.52	
		A433815		001-301-571.00	Repairs & Maintenance - Equipment	4.52	
		A434220	OIL ABSORBENT AAA BATTERY RAT POISON BAR	001-301-501.00	Supplies	58.45	
		A435292	BYPASS LOPPER	001-301-571.00	Repairs & Maintenance - Equipment	65.99	
DKT230807	Diaz Brothers Printing						495.00
	06/20/2023	6113	WEATHER RESISTANT INSPECTION CARDS	001-280-621.00	Printing & Binding	295.00	
		6191	STOP WORK ORDER SIGNS	001-280-621.00	Printing & Binding	200.00	
DKT230808	Digital Engineering and Imaging Inc						16,123.75
	06/20/2023	730-1001.007-04	BOND PAVING PROJECT	302-301-602.00	Professional Fees - Engineering	15,000.00	
		730-1001-33	WORK ASSIGNMENT #018 -- BEAUX VUE PHASE 2	001-301-602.00	Professional Fees - Engineering	1,123.75	
DKT230809	Dixieland Home Farm and Garden Center Inc						2,600.00
	06/20/2023	521106	BROWNTOP MILLET GRASS SEED	001-301-501.00	Supplies	2,600.00	
DKT230810	Eagle Energy						2,235.18
	06/20/2023	38906	PUBLIC WORKS FUEL	001-301-525.00	Fuel	9.59	
				001-301-525.00	Fuel	785.36	
		38907		001-301-525.00	Fuel	1,440.23	
DKT230811	FirstPoint Inc						20.00
	06/20/2023	16946	FINGERPRINT BACKGROUND CHECK	001-301-698.00	Misc. Services - Drug Testing & Other	20.00	
DKT230812	Fuelman						931.94
	06/20/2023	NP64547400	FOR THE WEEK ENDING 6/11/23	001-140-525.00	Fuel	42.03	
				001-200-525.00	Fuel	889.91	

## Docket of Claims Register - Council

APPKT02004

Item No. 19.

Docket/Claim #	Vendor Name	Payable Date	Payable Number	Payable Description	Account Number	Account Name	Line Amount	Payment Amount
DKT230813	GULF COPY SYSTEMS LLC	06/20/2023	3007	COPY COUNT FOR THE MONTH	001-110-506.00	Copier Usage/Maintenance	12.70	346.31
					001-110-506.00	Copier Usage/Maintenance	58.88	
					001-140-506.00	Copier Usage/Maintenance	29.18	
					001-140-506.00	Copier Usage/Maintenance	186.15	
					001-200-506.00	Copier Usage/Maintenance	10.30	
					001-200-506.00	Copier Usage/Maintenance	44.56	
					001-301-506.00	Copier Usage/Maintenance	1.02	
					001-301-506.00	Copier Usage/Maintenance	3.52	
DKT230814	Hancock Bank	06/20/2023	9	lease payment	001-800-830.03	Note Principal Payment - City Hall 2015	87,498.00	108,271.45
				CODH PROMISSORY NOTE LEASE PURCHASE	001-800-830.04	Note Interest Payment - City Hall 2015	20,773.45	
DKT230815	Hancock County Sheriffs Office	06/20/2023	2023-DH-005H	INMATE HOUSING FOR MAY 2023	001-200-689.00	Prisoner's Expense	180.00	77,943.67
			2023-DHLE-36	INTERLOCAL AGREEMENT FOR WEEK ENDING 5.6.23	001-200-690.00	Interlocal Agreement	675.22	
					001-110-681.00	Other Services & Charges	95.60	
					001-200-690.00	Interlocal Agreement	36,333.10	
					001-200-625.00	Insurance	2,100.00	
					001-200-612.00	Internet	246.00	
			2023-DHLE-37	INTERLOCAL AGREEMENT FOR WEEK ENDING 5.20.2023	001-200-690.00	Interlocal Agreement	1,388.18	
					001-200-690.00	Interlocal Agreement	36,679.57	
					001-200-612.00	Internet	246.00	
DKT230816	Hancock County Solid Waste	06/20/2023	1200	MAY RESIDENTIAL SOLID WASTE COLLECTION	401-322-680.00	Other Services & Charges	63,390.72	63,390.72
DKT230817	JLB CONTRACTORS LLC	06/20/2023	3	MILLER AND LILY POND DREDGING	159-000-912.00	Capital Outlay-Streets & Drainage- GOMESA FY21	149,132.14	149,132.14
DKT230818	Lowes Home Improvement	06/20/2023	960792-LCOBMS	POLICE DEPARTMENT LIGHT BULBS	001-140-560.00	Repairs & Maintenance - Building	75.99	75.99

## Docket of Claims Register - Council

APPKT02004 - 6 Item No. 19.

Docket/Claim #	Vendor Name	Payable Date	Payable Number	Payable Description	Account Number	Account Name	Line Amount	Payment Amount
DKT230819	MARTIN RIVERS	06/20/2023	9602	APPRAISALS	001-140-601.00	Professional Fees - Consulting	800.00	800.00
DKT230820	MAYLEY'S PEST CONTROL	06/20/2023	105155	PEST CONTROL CONTRACT	001-140-634.00	Pest Control	125.00	240.00
			6/14/23		001-140-634.00	Pest Control	115.00	
DKT230821	MEMORIAL HOSPITAL AT GULFPORT	06/20/2023	1120430	EMPLOYEE DRUG SCREENING FOR EMPLOYMENT	001-301-698.00	Misc. Services - Drug Testing & Other	30.00	30.00
DKT230822	MS Department of Public Safety	06/20/2023	MAY 2023	COURT ASSESSMENTS	650-110-131.00	State Assessments Payable	32.10	32.10
DKT230823	MS Department of Revenue Gulf Coast District	06/20/2023	FIREWORK SHOW 2023	BEER PERMIT - SECOND ANNUAL FIREWORK VIEWING	001-653-650.00	Promotions	10.00	10.00
DKT230824	Napa of Bay St Louis	06/20/2023	348301	OIL FILTER, DEF FLUID, TIRE INSERTS, ADAPTERS	001-301-571.00	Repairs & Maintenance - Equipment	10.62	647.13
					001-301-571.00	Repairs & Maintenance - Equipment	95.94	
					001-301-570.00	Repairs & Maintenance - Vehicle	8.85	
					001-301-570.00	Repairs & Maintenance - Vehicle	56.28	
					001-301-571.00	Repairs & Maintenance - Equipment	22.80	
			348558	FA #576 HOSE FITTINGS	001-301-571.00	Repairs & Maintenance - Equipment	67.64	
			348570	SHOP JUMP START SUPPLIES	001-301-571.00	Repairs & Maintenance - Equipment	80.91	
			348655	SHOP TRUCK WASH	001-301-501.00	Supplies	13.59	
			348982	FA #346 UNIVERSAL PARTS	001-301-571.00	Repairs & Maintenance - Equipment	159.96	
			350222	ADAPTERS	001-301-571.00	Repairs & Maintenance - Equipment	7.02	
			350553	DEXRON, HOSE FITTINGS, TX REEL	001-301-571.00	Repairs & Maintenance - Equipment	123.52	
DKT230825	Orion Planning and Design	06/20/2023	22-05-003	ZONING CODE REWRITE	001-280-601.00	Professional Fees - Consulting	5,237.50	5,867.50
			3811	PROTECTED BIKE LANE	001-301-602.00	Professional Fees - Engineering	630.00	
DKT230826	Pickering Firm Inc	06/20/2023	0093289	LILY POND DREDGING	159-000-602.00	Professional Fees - GOMESA Marsh Erosion	5,065.00	5,065.00



## Docket of Claims Register - Council

APPKT02004

Item No. 19.

Docket/Claim #	Vendor Name	Payable Date	Payable Number	Payable Description	Account Number	Account Name	Payment Amount Line Amount
DKT230827	Sea Coast Echo	06/20/2023	5/4/23	NOMA DRIVE WATERFRONT SITE - BIDS	001-140-620.00	Advertising	213.23
			5/5/23	SEA COAST ECHO CREDIT MEMO	001-140-620.00	Advertising	135.44
			6/8/23	COMMERCIAL DISTRICT TRANSFORMATION AD	001-140-620.00	Advertising	-148.71
			FENCE ORDINANCE - 6/8/	P&Z AD - FENCE TEXT AMENDMENT	001-280-620.00	Advertising	196.38
							30.12
DKT230828	Skinnners AC Service & Repair Inc	06/20/2023	6/6/23	14.3 SEER GOODMAN 5 TON HEAT AND AC	001-140-901.00	Capital Outlay - Building	8,100.00
							8,100.00
DKT230829	State Treasurer	06/20/2023	MAY 2023	COURT ASSESSMENT/FINE FOR MAY	650-110-131.00	State Assessments Payable	473.90
							473.90
DKT230830	Sun Coast Business Supply	06/20/2023	1340457-0	JESSIE HARWOOD	001-280-501.00	Office Supplies	13.37
							13.37
DKT230831	SunSouth LLC	06/20/2023	4594232	FA #521 CABLES FOR JOHN DEERE	001-301-571.00	Repairs & Maintenance - Equipment	242.02
							242.02
DKT230832	The Dave Mayley Band LLC	06/20/2023	JULY2023	FIREWORK CELEBRATION - BAND	001-653-650.00	Promotions	1,200.00
							1,200.00
DKT230833	TransUnion Risk and Alternative Data Solutions Inc	06/20/2023	5859551-202305-1	TLOxp FOR MAY	001-110-681.00	Other Services & Charges	150.00
			6177932-202305-1		001-200-681.00	Other Services & Charges	75.00
							75.00
DKT230834	Tree Tech LLC	06/20/2023	6.6.23	TREE REMOVALS - BAYOU CIR, DH DR W	001-301-681.00	Other Services & Charges	1,140.00
					001-301-681.00	Other Services & Charges	800.00
					001-301-681.00	Other Services & Charges	150.00
					001-301-681.00	Other Services & Charges	150.00
					001-301-681.00	Other Services & Charges	40.00
DKT230835	UMB Card Services	06/20/2023	INV204595199	MONTHLY CHARGES FOR ZOOM	001-140-623.00	Membership Dues/Fees	15.99
							15.99
DKT230836	UniFirst Corporation	06/20/2023	1530078476	UNIFORM RENTAL FOR THE WEEK ENDING 6/5/23	001-301-535.00	Uniforms	288.68
			1530079830	UNIFORM RENTAL FOR THE WEEK ENDING 6/12/23	001-301-535.00	Uniforms	144.34
							144.34

Docket of Claims Register - Council

APPKT02004 - 6 Item No. 19.

							Payment Amount
Docket/Claim #	Vendor Name	Payable Date	Payable Number	Payable Description	Account Number	Account Name	Line Amount
DKT230837	WageWorks						40.00
	06/20/2023	0523-DR42799		COBRA PAYMENT FOR	001-140-625.00	Insurance	40.00
DKT230838	WESLEY SANDERFORD						250.00
	06/20/2023	JULY 2023		FIRE WORK SHOW BAND	001-653-650.00	Promotions	250.00
Total Claims: 40							Total Payment Amount: 545,400.62



City of Diamondhead, MS

# Docket of Claims Register - Item No.20.

APPKT02003 - May 2023 Payroll Payables

By Docket/Claim Number

Docket/Claim #	Vendor Name					Payment Amount
	Payable Date	Payable Number	Payable Description	Account Number	Account Name	Line Amount
DKT230789	Colonial Life					357.10
	05/03/2023	INV0005461	EE PREMIUM	650-140-113.00	Colonial Withheld	61.08
		INV0005462	Critical Illness	650-140-113.00	Colonial Withheld	9.12
		INV0005463	EE Premium	650-140-113.00	Colonial Withheld	18.17
		INV0005464	EE PREMIUM	650-140-113.00	Colonial Withheld	24.60
		INV0005465		650-140-113.00	Colonial Withheld	32.80
		INV0005466		650-140-113.00	Colonial Withheld	32.78
	05/17/2023	INV0005487		650-140-113.00	Colonial Withheld	61.08
		INV0005488	Critical Illness	650-140-113.00	Colonial Withheld	9.12
		INV0005489	EE Premium	650-140-113.00	Colonial Withheld	18.17
		INV0005490	EE PREMIUM	650-140-113.00	Colonial Withheld	24.60
		INV0005491		650-140-113.00	Colonial Withheld	32.80
		INV0005492		650-140-113.00	Colonial Withheld	32.78
DKT230790	Systematized Benefits and Administrators Inc					14,518.95
	05/03/2023	INV0005467	Deferred Compensation	650-140-110.00	Deferred Compensation Withheld/Payable	4,839.65
	05/17/2023	INV0005493		650-140-110.00	Deferred Compensation Withheld/Payable	4,839.65
	05/31/2023	INV0005508		650-140-110.00	Deferred Compensation Withheld/Payable	4,839.65
DKT230791	MS Department of Revenue Payroll					3,293.00
	05/03/2023	INV0005477	Payroll State Withholding Taxes	650-140-134.00	State Withholding Tax	968.00
	05/17/2023	INV0005503		650-140-134.00	State Withholding Tax	1,212.00
	05/31/2023	INV0005510		650-140-134.00	State Withholding Tax	1,088.00
	06/01/2023	INV0005515		650-140-134.00	State Withholding Tax	25.00
DKT230792	Blue Cross Blue Shield of MS					10,130.08
	05/03/2023	INV0005474	MONTHLY PREMIUM	650-140-112.00	BCBS Withheld/Payable	5,065.12
	05/17/2023	INV0005500		650-140-112.00	BCBS Withheld/Payable	5,064.96
DKT230793	Texas Life					95.55
	05/03/2023	INV0005476	Texas Life	650-140-113.05	Texas Life Withheld	47.78
	05/17/2023	INV0005502		650-140-113.05	Texas Life Withheld	47.77



## Docket of Claims Register - Council

APPKT02003 - May 2023

Item No.20.

Docket/Claim #	Vendor Name		Payable Description	Account Number	Account Name	Payment Amount
	Payable Date	Payable Number				Line Amount
DKT230794	Guardian					882.90
	05/03/2023	INV0005468	ER Life Ins Over 65	650-140-113.01	Guardian Withheld/Payable	6.88
		INV0005469	ER Guardian Life Over 70	650-140-113.01	Guardian Withheld/Payable	7.95
		INV0005471	EE PREMIUM	650-140-113.01	Guardian Withheld/Payable	282.09
		INV0005472	ER BENEFIT LIFE INS MONTHLY PREMIUM	650-140-113.01	Guardian Withheld/Payable	89.93
		INV0005473	EE PREMIUM	650-140-113.01	Guardian Withheld/Payable	49.38
	05/17/2023	INV0005494	ER Life Ins Over 65	650-140-113.01	Guardian Withheld/Payable	6.86
		INV0005495	ER Guardian Life Over 70	650-140-113.01	Guardian Withheld/Payable	7.92
		INV0005497	EE PREMIUM	650-140-113.01	Guardian Withheld/Payable	282.02
		INV0005498	ER BENEFIT LIFE INS MONTHLY PREMIUM	650-140-113.01	Guardian Withheld/Payable	100.51
		INV0005499	EE PREMIUM	650-140-113.01	Guardian Withheld/Payable	49.36
DKT230795	Morgan White Group					1,253.20
	05/03/2023	INV0005475	Morgan White	650-140-112.01	Morgan White Payable	607.79
	05/17/2023	INV0005501		650-140-112.01	Morgan White Payable	607.74
				650-140-112.01	Morgan White Payable	37.67
DKT230796	American Fidelity					684.84
	05/03/2023	INV0005456	American Fidelity Hospital Gap Plan	650-140-113.04	American Fidelity Withheld	37.85
		INV0005457	American Fidelity Term Life	650-140-113.04	American Fidelity Withheld	15.52
		INV0005458	American Fidelity Accident	650-140-113.04	American Fidelity Withheld	70.75
		INV0005459	American Fidelity Critical Illness	650-140-113.04	American Fidelity Withheld	38.63
		INV0005460	American Fidelity Disability	650-140-113.04	American Fidelity Withheld	179.67
	05/17/2023	INV0005482	American Fidelity Hospital Gap Plan	650-140-113.04	American Fidelity Withheld	37.85
		INV0005483	American Fidelity Term Life	650-140-113.04	American Fidelity Withheld	15.52
		INV0005484	American Fidelity Accident	650-140-113.04	American Fidelity Withheld	70.75
		INV0005485	American Fidelity Critical Illness	650-140-113.04	American Fidelity Withheld	38.63
		INV0005486	American Fidelity Disability	650-140-113.04	American Fidelity Withheld	179.67
DKT230797	Internal Revenue Service					19,998.65
	05/01/2023	INV0005453	Federal Payroll Taxes	650-140-122.00	Social Security Withheld/Payable	361.64
		INV0005454		650-140-122.01	Medicare Withheld/Payable	84.56
		INV0005455		650-140-123.00	Federal Withholding Tax	145.00
	05/03/2023	INV0005478		650-140-122.00	Social Security Withheld/Payable	5,003.54
		INV0005479		650-140-122.01	Medicare Withheld/Payable	1,170.18
		INV0005480		650-140-123.00	Federal Withholding Tax	2,803.44
	05/17/2023	INV0005504		650-140-122.00	Social Security Withheld/Payable	5,675.16
		INV0005505		650-140-122.01	Medicare Withheld/Payable	1,327.22
		INV0005506		650-140-123.00	Federal Withholding Tax	3,427.91

Docket of Claims Register - Council

Docket/Claim #	Vendor Name	Payable Date	Payable Number	Payable Description	Account Number	Account Name	Line Amount	Payment Amount
DKT230798	MS Department of Human Services							969.30
		05/03/2023	INV0005470	620583243	650-140-106.00	Garnishment Withheld	323.10	
		05/17/2023	INV0005496		650-140-106.00	Garnishment Withheld	323.10	
		05/31/2023	INV0005509		650-140-106.00	Garnishment Withheld	323.10	
Total Claims: 10							Total Payment Amount:	52,183.57

**PR Net**

<b>Wages</b>	<b>Payroll Pd</b>	<b>Seq No.</b>	<b>Docket #</b>	<b>Description</b>	<b>Paymt Date</b>	<b>Amount</b>	<b>Agenda</b>
PKPKT01364	04/01/-04/30	000160	PRCLAIM010160	Net Wages Payable	5/1/2023	2,523.58	6/20/2023
PYPKT01365	04/10-04/23 Bi-Weekly	000161	PRCLAIM010161	Net Wages Payable	5/3/2023	26,860.60	6/20/2023
PYPKT01371	04/24-05/07 Bi-Weekly	000162	PRCLAIM010162	Net Wages Payable	5/17/2023	30,994.19	6/20/2023
PYPKT01374	05/08 -05/21 Bi-Weekly	000163	PRCLAIM010163	Net Wages Payable	5/31/2023	30,484.97	6/20/2023



**CITY OF DIAMONDHEAD, MISSISSIPPI**  
**Financial Statements**  
**Coversheet to Monthly Budget Report**  
**For the Month Ended May 31, 2023**

**ALL FUNDS HIGHLIGHTS**

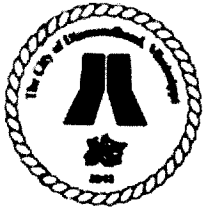
<b>*Revenue:</b>		<u>Current Year</u>	<u>Prior Year</u>
Total YTD Revenue	\$	9,818,929	\$ 7,304,750
Total Budget	\$	19,526,777	\$ 16,986,867
% Actual to Budget		50.3%	
Current Month % to Fiscal Year		66.7%	66.7%
<b>*Expenses YTD Activity:</b>		<u>Current Year</u>	<u>Last Year</u>
Total YTD Expenses Actual Activity	\$	4,747,140	\$ 5,690,404
Total YTD Expenses Activity w/ Encumbrances	\$	6,158,452	\$ 7,564,339
Total Budget	\$	21,149,433	\$ 20,001,668
% Actual to Budget		22.4%	
% Actual w/ Encumbrances to Budget		29.1%	
Current Month % to Fiscal Year		66.7%	66.7%

\* Excludes Other Financing Sources and Uses

**Depository Account Balances as of: May 31, 2023**

General Bank Acct:	\$	9,550,233	Unrestricted	\$	5,598,211
Accounts Payable Clearing:		18,563	Fiduciary Fund		33,294
Payroll Clearing:		89,284	Solid Waste		261,711
Contingency Operating Fund:		2,098,741	Grant Funds		1,112,896
			MS Infrastructure		366,404
			Amer Rescue & F		89,284
			GO BONDS 2022		4,295,019
<b>TOTAL</b>	<b>\$</b>	<b>11,756,820</b>		<b>\$</b>	<b>11,756,820</b>

<b>Fund Activity</b>	<u>YTD Actual</u>	<u>YTD Actual w/ Encumbrances</u>	<u>Total Current Budget</u>
001 - General Fund	\$ 1,172,961	\$ 689,882	\$ (968,727)
104 - MS Infrastructure Modernization Fund	\$ 37,629	\$ 231,594	\$ -
113 - Grant - GRPC Multi Modal Path	\$ -	\$ -	\$ -
115 - Grant- Tidelands FY20 Rotten Bayou P	\$ (17,952)	\$ -	\$ -
117 - Grant- MDA-SMLP East Aloha Improve	\$ 120,250	\$ 154,247	\$ (527)
156 - Grant- GCRF-MDA FY2020 Commercial	\$ (73,515)	\$ (7,425)	\$ -
157 - Grant- GRPC - East Aloha Improvemer	\$ -	\$ -	\$ -
158 - Grant - Tidelands FY21/22 Noma Drive	\$ (37,867)	\$ (45,778)	\$ -
159 - Grant - GOMESA Marsh Erosion Preve	\$ (269,061)	\$ (586,322)	\$ -
160 - Grant - DMR - Twin Lakes Pier/Boardw	\$ (21,250)	\$ -	\$ -
161 - Grant - GCRF-MDA FY2021 COMMERCIAL	\$ -	\$ -	\$ (400,000)
162 - Grant-GOMESA FY22 -Coon Branch P	\$ (6,922)	\$ (291,850)	\$ -
190 - American Rescue & Recovery Act	\$ (179,605)	\$ (211,357)	\$ (149,813)
302 - FY22 BOND ISSUE	\$ 4,277,451	\$ 4,087,818	\$ -
401 - Solid Waste Fund	\$ 69,669	\$ 69,669	\$ (103,590)
<b>TOTAL Surplus (Deficit)</b>	<b>\$ 5,071,789</b>	<b>\$ 4,090,477</b>	<b>\$ (1,622,657)</b>



City of Diamondhead, MS

Item No.a.

# Income Statement Group Summary

For Fiscal: 2022-2023 Period Ending: 05/31/2023

Account Type	Original Total Budget	Current Total Budget	MTD Activity	YTD Activity	YTD Activity + Encumbrances	Budget Remaining
<b>Fund: 001 - GENERAL FUND</b>						
Revenue	5,118,150.00	5,118,150.00	224,250.77	4,424,366.17	4,424,366.17	693,783.83
Expense	5,368,790.35	6,086,876.65	242,582.56	3,229,166.87	3,712,246.24	2,374,630.41
<b>Fund: 001 - GENERAL FUND Surplus (Deficit):</b>	<b>-250,640.35</b>	<b>-968,726.65</b>	<b>-18,331.79</b>	<b>1,195,199.30</b>	<b>712,119.93</b>	<b>-1,680,846.58</b>
<b>Fund: 104 - MS Infrastructure Modernization Fund</b>						
Revenue	400,125.00	400,125.00	1,498.71	273,831.13	273,831.13	126,293.87
Expense	400,125.00	400,125.00	0.00	234,703.30	40,738.75	359,386.25
<b>Fund: 104 - MS Infrastructure Modernization Fund Surplus (Deficit)</b>	<b>0.00</b>	<b>0.00</b>	<b>1,498.71</b>	<b>39,127.83</b>	<b>233,092.38</b>	<b>-233,092.38</b>
<b>Fund: 113 - Grant - GRPC Multi Modal Path</b>						
Revenue	80,000.00	80,000.00	0.00	0.00	0.00	80,000.00
Expense	80,000.00	80,000.00	0.00	0.00	0.00	80,000.00
<b>Fund: 113 - Grant - GRPC Multi Modal Path Surplus (Deficit):</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Fund: 115 - Grant- Tidelands FY20 Rotten Bayou Public Access</b>						
Revenue	556,878.94	556,878.94	0.00	0.00	0.00	556,878.94
Expense	556,878.94	556,878.94	10,486.50	17,951.50	0.00	556,878.94
<b>Fund: 115 - Grant- Tidelands FY20 Rotten Bayou Public Access Surp</b>	<b>0.00</b>	<b>0.00</b>	<b>-10,486.50</b>	<b>-17,951.50</b>	<b>0.00</b>	<b>0.00</b>
<b>Fund: 117 - Grant- MDA-SMLP East Aloha Improvement</b>						
Revenue	0.00	0.00	150,000.00	150,000.00	150,000.00	-150,000.00
Expense	0.00	526.81	0.00	29,750.05	-4,247.27	4,774.08
<b>Fund: 117 - Grant- MDA-SMLP East Aloha Improvement Surplus (D</b>	<b>0.00</b>	<b>-526.81</b>	<b>150,000.00</b>	<b>120,249.95</b>	<b>154,247.27</b>	<b>-154,774.08</b>
<b>Fund: 156 - Grant- GCRF-MDA FY2020 Commercial District</b>						
Revenue	1,850,000.00	1,850,000.00	0.00	0.00	0.00	1,850,000.00
Expense	1,850,000.00	1,850,000.00	0.00	73,515.45	7,425.00	1,842,575.00
<b>Fund: 156 - Grant- GCRF-MDA FY2020 Commercial District Surplus</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>-73,515.45</b>	<b>-7,425.00</b>	<b>7,425.00</b>
<b>Fund: 157 - Grant- GRPC - East Aloha Improvements Phase 2</b>						
Revenue	490,000.00	490,000.00	0.00	0.00	0.00	490,000.00
Expense	490,000.00	490,000.00	0.00	0.00	0.00	490,000.00
<b>Fund: 157 - Grant- GRPC - East Aloha Improvements Phase 2 Surpl</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Fund: 158 - Grant - Tidelands FY21/22 Noma Drive Public Access</b>						
Revenue	726,872.59	726,872.59	0.00	0.00	0.00	726,872.59
Expense	726,872.59	726,872.59	7,311.00	37,866.61	45,778.00	681,094.59
<b>Fund: 158 - Grant - Tidelands FY21/22 Noma Drive Public Access S</b>	<b>0.00</b>	<b>0.00</b>	<b>-7,311.00</b>	<b>-37,866.61</b>	<b>-45,778.00</b>	<b>45,778.00</b>
<b>Fund: 159 - Grant - GOMESA Marsh Erosion Prevention</b>						
Revenue	495,000.00	495,000.00	0.00	0.00	0.00	495,000.00
Expense	495,000.00	495,000.00	152,505.10	269,061.15	586,322.00	-91,322.00
<b>Fund: 159 - Grant - GOMESA Marsh Erosion Prevention Surplus (D</b>	<b>0.00</b>	<b>0.00</b>	<b>-152,505.10</b>	<b>-269,061.15</b>	<b>-586,322.00</b>	<b>586,322.00</b>
<b>Fund: 160 - Grant - DMR - Twin Lakes Pier/Boardwalk</b>						
Revenue	149,000.00	149,000.00	0.00	0.00	0.00	149,000.00
Expense	149,000.00	149,000.00	0.00	21,250.00	0.00	149,000.00
<b>Fund: 160 - Grant - DMR - Twin Lakes Pier/Boardwalk Surplus (Defi</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>-21,250.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Fund: 161 - Grant - GCRF-MDA FY2021 COMMERCIAL DISTRICT</b>						
Revenue	2,000,000.00	2,000,000.00	0.00	0.00	0.00	2,000,000.00
Expense	2,400,000.00	2,400,000.00	0.00	0.00	0.00	2,400,000.00
<b>Fund: 161 - Grant - GCRF-MDA FY2021 COMMERCIAL DISTRICT Sur</b>	<b>-400,000.00</b>	<b>-400,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>-400,000.00</b>
<b>Fund: 162 - Grant-GOMESA FY22 -Coon Branch Projects</b>						
Expense	0.00	0.00	6,922.00	6,922.00	291,850.00	-291,850.00
<b>Fund: 162 - Grant-GOMESA FY22 -Coon Branch Projects Total:</b>	<b>0.00</b>	<b>0.00</b>	<b>6,922.00</b>	<b>6,922.00</b>	<b>291,850.00</b>	<b>-291,850.00</b>
<b>Fund: 190 - American Rescue &amp; Recovery Act</b>						
Revenue	2,000,500.00	2,000,500.00	5,878.84	42,462.56	42,462.56	1,958,037.44

## Income Statement

For Fiscal: 2022-2023 Period Ending: 05/31/2023

Account Type	Original Total Budget	Current Total Budget	MTD Activity	YTD Activity	YTD Activity + Encumbrances	Budget Remaining
Expense	2,000,500.00	2,150,313.37	22,584.60	216,188.46	247,940.88	1,902,372.49
Fund: 190 - American Rescue & Recovery Act Surplus (Deficit):	0.00	-149,813.37	-16,705.76	-173,725.90	-205,478.32	55,664.95
Fund: 191 - ARPA Match- Hancock County						
Expense	0.00	0.00	0.00	0.00	430,000.00	-430,000.00
Fund: 191 - ARPA Match- Hancock County Total:	0.00	0.00	0.00	0.00	430,000.00	-430,000.00
Fund: 302 - FY22 BOND ISSUE						
Revenue	5,040,000.00	5,040,000.00	17,568.02	4,454,995.53	4,454,995.53	585,004.47
Expense	5,040,000.00	5,040,000.00	34,037.50	159,976.25	349,610.00	4,690,390.00
Fund: 302 - FY22 BOND ISSUE Surplus (Deficit):	0.00	0.00	-16,469.48	4,295,019.28	4,105,385.53	-4,105,385.53
Fund: 401 - SOLID WASTE FUND						
Revenue	620,250.00	620,250.00	98,219.87	521,527.53	521,527.53	98,722.47
Expense	723,840.00	723,840.00	63,207.60	450,788.37	450,788.37	273,051.63
Fund: 401 - SOLID WASTE FUND Surplus (Deficit):	-103,590.00	-103,590.00	35,012.27	70,739.16	70,739.16	-174,329.16
Total Surplus (Deficit):	-754,230.35	-1,622,656.83	-42,220.65	5,120,042.91	3,708,730.95	



## Income Statement

Item No.a.

For Fiscal: 2022-2023 Period Ending: 05/31/2023

## Fund Summary

Fund	Original Total Budget	Current Total Budget	MTD Activity	YTD Activity	YTD Activity + Encumbrances	Budget Remaining
001 - GENERAL FUND	-250,640.35	-968,726.65	-18,331.79	1,195,199.30	712,119.93	-1,680,846.58
104 - MS Infrastructure Mod	0.00	0.00	1,498.71	39,127.83	233,092.38	-233,092.38
113 - Grant - GRPC Multi Mo	0.00	0.00	0.00	0.00	0.00	0.00
115 - Grant- Tidelands FY20	0.00	0.00	-10,486.50	-17,951.50	0.00	0.00
117 - Grant- MDA-SMLP East	0.00	-526.81	150,000.00	120,249.95	154,247.27	-154,774.08
156 - Grant- GCRF-MDA FY20	0.00	0.00	0.00	-73,515.45	-7,425.00	7,425.00
157 - Grant- GRPC - East Aloha	0.00	0.00	0.00	0.00	0.00	0.00
158 - Grant - Tidelands FY21/	0.00	0.00	-7,311.00	-37,866.61	-45,778.00	45,778.00
159 - Grant - GOMESA Marsh	0.00	0.00	-152,505.10	-269,061.15	-586,322.00	586,322.00
160 - Grant - DMR - Twin Lak	0.00	0.00	0.00	-21,250.00	0.00	0.00
161 - Grant - GCRF-MDA FY2	-400,000.00	-400,000.00	0.00	0.00	0.00	-400,000.00
162 - Grant-GOMESA FY22 -C	0.00	0.00	-6,922.00	-6,922.00	-291,850.00	291,850.00
190 - American Rescue & Rec	0.00	-149,813.37	-16,705.76	-173,725.90	-205,478.32	55,664.95
191 - ARPA Match- Hancock	0.00	0.00	0.00	0.00	-430,000.00	430,000.00
302 - FY22 BOND ISSUE	0.00	0.00	-16,469.48	4,295,019.28	4,105,385.53	-4,105,385.53
401 - SOLID WASTE FUND	-103,590.00	-103,590.00	35,012.27	70,739.16	70,739.16	-174,329.16
<b>Total Surplus (Deficit):</b>	<b>-754,230.35</b>	<b>-1,622,656.83</b>	<b>-42,220.65</b>	<b>5,120,042.91</b>	<b>3,708,730.95</b>	

6/05/2023 8:50 AM

L I C E N S E   M A S T E R   R E P O R T

LICENSES: ALL

SORTED BY:   LICENSE NUMBER

LICENSE CODES: Include: PRIV-MFG, PRIV-RET, PRIV-SERV

CLASSES: Include: PRIV

STATUS: ACTIVE

CITY LIMITS: INSIDE, OUTSIDE

EFFECTIVE DATES:

PAGE: 5/01/2023 - 5/31/2023

EXPIRATION DATES:

0/00/0000 - 0/00/0000

COMMENT:

PAY STATUS:

Item No.b.

\*\*\* NO RECORDS MET THE SELECTION CRITERIA \*\*\*

No Privilege License  
for May-2023

6/05/2023 8:46 AM

PROJECT MASTER REPORT

PAGE:

PROJECTS: THRU ZZZZZZZZZZ

PROJECT TYPE: All

CONTRACTOR CLASS: All

REPORT SEQUENCE: - All Contra Item No.b. se

CONTRACTORS: All

APPLIED DATES: 0/00/0000 THRU 99/99/9999

EXPIRE DATES: 0/00/0000 THRU 99/99/

STATUS INCLUDED: All

ISSUED DATES: 5/01/2023 THRU 5/31/

\*\*\* PROJECT TYPE RECAP \*\*\*

PROJECT TYPE	# OF PROJECTS	BALANCE
B01-SFR - SINGLE FAMILY RESIDENTI	7	2,530.00
B02-ADD - RESIDENTIAL ADDITION	6	0.00
B04-ACC - RESIDENTIAL ACCESSORY	3	0.00
B05-REP - RESIDENTIAL REPAIR	8	121.00
ELEC-RES - RESIDENTIAL ELECTRICAL	4	150.00
FENCE-RES - RESIDENTIAL FENCE	8	255.00
FLAT-RES - RESIDENTIAL FLATWORK	4	0.00
PLB-RES - RESIDENTIAL PLUMBING	2	0.00
POOL-RES - RESIDENTIAL POOL	1	0.00
TREE - TREE REMOVAL	2	0.00
*** TOTALS ***	45	3,056.00

Project Report may-23





DIAMONDHEAD MUNICIPAL COURT  
5000 Diamondhead Circle  
Diamondhead, MS 39525  
Tel.: (228) 222-4626

Fax: (228) 222-4390

Robert H. Johnson, Jr., Judge  
Derek Cusick, Prosecutor  
Lolita McSwain, Court Clerk

JUNE 5, 2023

To: DIAMONDHEAD CITY MANAGER

STATS FOR THE MONTH OF MAY 2023:

Number of Tickets Written: 23  
Violation City Animal Ordinance: 3  
Leash Law Violation: 0  
Cruelty to Animals: 2

Total fines and fees collected: \$1187.00  
State portion of the fees collected: \$473.90  
Wireless Communication portion collected: \$30.10  
Remaining balance the City of Diamondhead receives: \$681.00  
Crime Stoppers Fund: 2.00

Total defendants arrested on Failure to Appear warrants: 5  
Total inmates held and billed for jail housing:  
(Housing cost rate of \$20 per day per inmate)  
4 inmates @ 9 days = \$180.00

## Diamondhead Monthly Statistics

Item No.b.

May-23

Animal Problem / Complaints	20	Civil Disputes / Escorts / Process	6
Drug Law Violation	1	Complaint / See An Officer	20
Fire Structure / Vehicle	1	Death	2
Fireworks	0	Disturbance	13
Funeral Escort	0	False Alarms- Residential/ Business/ 911	30
Littering/Dumping/Haz-Mat Spill	0	Follow ups/ citizen call requests	9
Medical Emergency	4	Juvenile Problem	1
Missing/Runaway	17	Lost/Found Item	6
Parking Violation	1	Miscellaneous	649
Prostitution	5	<b>TOTAL MISCELLANEOUS CALLS</b>	736
Public Drunk	0	Accident – Private Property	3
Shots Fired	0	Accident – Public Roadway	5
Suicide	0	Accident - Hit & Run	1
Suicide / Threat / Attempt	0	Accident - Fatality	0
Suspicious / Person / Vehicle	33	<b>TOTAL ACCIDENTS/COLLISIONS</b>	9
Welfare Concern	24	Assist Motorist	8
<b>TOTAL PUBLIC HEALTH &amp; SAFETY</b>	106	Traffic Stop	158
Animal Bite	0	<b>TOTAL TRAFFIC CALLS</b>	166
Assault By Threat	4		
Assault	2	<b>Total Calls for Service</b>	<b>1046</b>
Child Abuse / Neglect	0	<b>Traffic Citation (Adults)</b>	<b>12</b>
Domestic Violence	2	<b>Traffic Citation (Minors)</b>	<b>1</b>
Harrassment	0	Warrant Arrests	5
Harassing Phone Call	0	Drunk Driver (DUI) Arrests	0
Robbery – Armed	0	Traffic Arrests	0
Sexual Abuse / Molestation	0	Domestic Assault Arrests	0
Stalking	0	Other Arrests	0
<b>TOTAL CRIMES AGAINST PERSON</b>	8	<b>Total Arrests</b>	<b>5</b>
Attempted Burglary	1	<b>Significant Events</b>	
Burglary – Residence	1		
Burglary – Vehicle	0		
Counterfeit Money	0		
Damage – Property	4		
Embezzlement	0		
Forgery / Bad Check/Fraud	8		
Malicious Mischief	1		
Recovered Stolen Property	0		
Recovered Stolen Vehicle	0		
Shoplifting	1		
Stolen Vehicle	3		
Theft (Grand)	1		
Theft (Petit)	0		
Trespassing	1		
Unauthorized Use / Vehicle	0		
<b>TOTAL PROPERTY CRIME</b>	21		

Darryl Russell  
Captain

## CODE ENFORCEMENT

Item No.b.

Code Violations	May/23	Total	Closed	Open
Abandoned Vehicles		1	1	0
Abandoned/Dilapidated/Deteriorated House (unoccupied)				0
Advertising/Solicitation				0
ATV				0
Boats		6	6	0
Camper		1	1	0
Cars in Yard				0
Construction Equipment		1	1	0
Dumpster (commercial)				0
Dumpster (residential)				0
Fence		2	2	0
Furniture in Yard		1	1	0
Golf Carts		1	1	0
Graffiti				0
High Grass (overgrown)/Shrubs		2	2	0
Jet Ski				0
Lack of Maintenance (structure)				0
Parking		2	2	0
Permit		5	5	0
POD				0
Pool				0
RV		2	2	0
Signs		4	4	0
Slab/Driveway Removal				0
Trailers		3	3	0
Trash & Rubbish		2	2	0
Trash Cans				0
Unapproved Structure				0
				0
Cumulative Totals		33	33	0