



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, August 01, 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 August 1, 2023 at 6:00 p.m. in Council Chambers located at City Hall.

Council Comments.

City Manager's Report.

Public Comments on Agenda Items.

**Policy Agenda.**

**Minutes:**

1. Motion to approve the July 18, 2023 Regular Meeting Minutes.

**Tabled:**

2. **2023-274:** Motion to contribute up to \$40,000.00 for the Dog Park from the General Fund Balance. (Finley)

**Resolutions:**

3. **2023-290:** Motion to adopt Resolution **2023-031** to approve a Text Amendment to the Sign Ordinance Article 10.4.10 – Window Signs. The proposed text amendment is to remove “A permanent window sign shall be classified as a wall sign.” Article 10.5.2 On-Premises Attached Signs c; Place a black square in the table in zoning districts C-1, C-2, PFR, T, and I [The black square means a sign permit is required]. Article 10.6 Dimensional Requirements, Number of Signs and Special Conditions; Sign Type #8 Window Signs; Area; “Change 50% to 25% of window area.”, Special Conditions; remove "None" and replace with "Rope lighting of any kind/type within the window casements is prohibited. Window lighting shall only be operational during business hours." Article 10.7 - Exempt Signs, delete “10.c Windows.” Article 10.10.1 Non-Conforming Existing Signs; Insert “All window signs which are not in conformance with the Ordinance shall be unlawful one (1) year after the passage of the window sign text amendment.” The Case File Number is 202300332.

## Consent Agenda:

- 4.** **2023-288:** Motion to accept and award the low quote received from Warren Paving, Inc. in the amount of \$3,339,408.85 for Bond Paving Project and authorize the City Manager to execute the contract for same and to issue the notice to proceed as appropriate.
- 5.** **2023-289:** Motion to approve Mississippi Department of Environmental Quality Subaward Agreement for Mississippi Municipal and County Water Infrastructure Grant.
- 6.** **2023-291:** Motion to approve work assignment with Machado Patano, PLLC for Hilo Way Drainage in an amount not to exceed \$10,000.00.
- 7.** **2023-293:** Motion to approve Change Order No. 5 for forty six (46) additional days to the contract with Huey P. Stockstill, LLC. for the Roadway Improvements Phase 4 with no change to contract price.
- 8.** **2023-294:** Motion to accept and award the low quote received from Bottom 2 Top Construction, LLC. in the amount of \$4,173,187.31 for the Commercial District Transformation Project Phase I and authorize the City Manager to execute the contract for same and to issue the notice to proceed as appropriate.
- 9.** **2023-295:** Motion to approve Addendum to the Lease Agreement for the Noma Drive Ballfield property with Diamondhead Country Club & Property Owners Association Inc.

## Action Agenda.

- 10.** **2023-292:** Motion to approve the Planning Commission recommendation to allow Teresa and Brian Leatherman a variance from the Zoning Ordinance (Article 4.19) to construct a covered patio (36.26' x 11.4') within 17.9' of the rear property line. The property address is 7518 Augusta Way. The tax parcel number is 067M-2-35-007.000. The property is in an R-1 zoning district. The rear yard setback is 20'. The variance requested for the covered patio is 2.1'. The Case File Number is 202300282.

## Routine Agenda.

### Claims Payable

- 11.** Motion to approve Docket of Claims (DKT230917 - DKT230946) in the amount of \$52,849.47.

## 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, July 18, 2023

6:00 PM CST

Council Chambers, City Hall  
and via teleconference, if necessary

#### Call to Order.

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

Invocation

Councilmember Finley

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 3 Cumberland to adjust the agenda whereby tabling action item **2023-274**: Motion to contribute up to \$40,000.00 for the Dog Park from the General Fund Balance.

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 August 1, 2023 at 6:00 p.m. in Council Chambers located at City Hall.
- b. Starr Chapman, Attorney General's Office - Identity Theft and Scam Prevention Presentation.

## City Manager's Report.

1. Park Ten Road – Bids were opened last week but are still under review by the engineer.
2. Phase 4 paving – The paving project is currently demobilized. A culvert project is being completed in the area. Once done, the paving project can be finished. The engineer has asked that we meet prior to restarting. The contact end date of July 31<sup>st</sup>.
3. Diamondhead Drive Paving – Bids were due July by 18<sup>th</sup> and have been opened. A recommendation will be on the August council meeting agenda to award.
4. Noma Drive Boat Launch – Phase 1a has been awarded. The construction documents are being completed and a work schedule should be provided soon. A groundbreaking will be held on July 25<sup>th</sup>.
5. Makiki Drive – The city engineer has developed the specifications to complete the project. They expect to have the drawings available for approval on the next agenda.
6. Stormwater Projects – Most of the state ARPA matching funds grant agreements have been received from the state. Engineer task orders are on the agenda for approval.
7. Hilo Way – Engineer has provided three suggestions to help with the issue. The city is working on implementing the three suggestions and will continue to monitor the situation to determine if follow-up is needed. Public works will install a berm in the median to divert the water past the homeowner's driveway.
8. Montjoy Creek – The engineer needs to finalize the pier location and easement. They were looking at the easement location last week from Banyon across the front of the pump station and across the creek and then through the woods. They are going to adjust the pier location and request an easement from the property owner.
9. Noma Drive Waterfront – The engineer has received some minor comments from USACE about the wetland's location. The engineer will address the concerns and return them by the middle of this week.

**Email Request Received**

1. Poki Place – Trees were removed from a lot on this street. The building department was asked to check the site to determine if tree ordinance was followed. It was determined that five pine trees were cut and removed from the site. The stumps are still on the lot. No evidence of any protected trees was found.
2. Montjoy Creek – Request from resident that Montjoy Creek be mowed. Project closed.
3. Analii Street – Request from resident to stripe Analii Street. I have already asked the engineer to provide a price from the contractor.
4. Lily Pond – Resident contacted the city regarding the silt fencing was down in several areas around the pond. I asked PW to check on this on Monday (10<sup>th</sup>). Public Works needs to remove the sediment prior to repairing the silt fencing, current weather conditions have prevented this.
5. Anahola Place – Resident asked that neighbor's ditch be cleaned out. A work order was created. Project was completed on the 13<sup>th</sup>.
6. Cul-de-sac Rabbit Run – Request to clean up overgrowth and to trim tree branches. Work order was created.

7. Drainage Ditch – Request to clean out drainage ditch behind 3, 4, and 5 Rabbit Run. Work order was created.
8. Timber Park, Wilderness Run and Holly Corner – Drain inlets are covered by leaves. Work order was created.
9. Coelho Way – Resident provided photos of road damage due to water line leak. Diamondhead Water and Sewer Department was contacted to get information regarding the water line leak. The leak has been repaired as of March 10<sup>th</sup>. It is on their “restoration list” to patch once it becomes cost effective.
10. Kaleki Way – Resident is concerned that drainage ditches are obstructed with debris. Work order was created.
11. Landscape Culvert – Reported that a landscape culvert was being installed at 74606 Diamondhead Drive North. This was a permitted driveway extension and not a landscape culvert.
12. Pokai Street – Resident at 9728 Pokai Street concerned about the water backing up in the ditch. Public Works cleaned out the ditch and put rip rap around outlet culvert.
13. #15 Pond – Resident expressed concern about the condition of pond due to stormwater runoff. The building department is checking to make sure all erosion control measures are being followed.

Ben Benvenuti, City Engineer and Gerrod Kilpatrick, Engineer MP Designs spoke on potential dog park sites and plans.

Councilmember Liese requested the Diamondhead Water and Sewer District correspondence dated July 11, 2023 become an official part of the minutes.

Public Comments on Agenda Items-None.

## Policy Agenda.

### Minutes:

1. Motion to approve the July 5, 2023 Regular Meeting Minutes.

Motion made by Ward 1 Finley, Seconded by Ward 4 Clark to approve the July 5, 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**

2. Motion to approve the July 5, 2023 Recess Meeting Minutes.

Motion made by Ward 1 Finley, Seconded by Councilmember-At-Large Maher to approve the July 5, 2023 Recess 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**

**Resolutions:**

- 3. **2023-281:** Motion to adopt Resolution 2023-029 thereby authorizing an application to the Mississippi Development Authority for a FY24 Gulf Coast Restoration Fund Grant in the amount of \$2,500,000 (80% or \$2,000,000 GCRF share and 20% or \$500,000 local match funding) for the Commercial District Transformation Project, more specifically Gex Road and Park Ten Drive and Gex Road to the Town Center and for other related purposes.

Motion made by Ward 1 Finley, Seconded by Ward 4 Clark to adopt Resolution 2023-029 thereby authorizing an application to the Mississippi Development Authority for a FY24 Gulf Coast Restoration Fund Grant in the amount of \$2,500,000 (80% or \$2,000,000 GCRF share and 20% or \$500,000 local match funding) for the Commercial District Transformation Project, more specifically Gex Road and Park Ten Drive and Gex Road to the Town Center and for other related purposes.

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

**MOTION CARRIED UNANIMOUSLY**

- 4. **2023-282:** Motion to adopt Resolution 2023-030 thereby authorizing the City Manager to make application to Mississippi Department of Marine Resources for FY24 GOMESA funding in the amount of \$2,000,000 for Phase 1 Bank Stabilization Project and for other related purposes.

Motion made by Ward 1 Finley, Seconded by Ward 4 Clark to adopt Resolution 2023-030 thereby authorizing the City Manager to make application to Mississippi Department of Marine Resources for FY24 GOMESA funding in the amount of \$2,000,000 for Phase 1 Bank Stabilization Project and for other related purposes.

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

**MOTION CARRIED UNANIMOUSLY**

**Consent Agenda:**

Motion made by Ward 3 Cumberland, Seconded by Ward 4 Clark to approve the following consent items:

- 5. **2023-272:** Motion to approve payments to Pickering in the amount of \$1,485.00 for Lily Pond Dredging, in the amount of \$1,350.00 for Diamondhead Dr. East Retention Pond Dredging and in the amount of \$3,282.50 for Ahuli Drainage Improvements.
- 6. **2023-273:** Motion to approve the amended and restated Grant Agreements with Mississippi Development Authority for Gulf Coast Restoration Fund Program for FY20, FY21 and FY22.
- 7. **2023-276:** Motion to approve participation in the U.S. Army Career Skills Program and authorize the City Manager to execute the agreement for same.
- 8. **2023-277:** Motion to authorize the City Clerk to provide notice of a Public Hearing to be held August 15, 2023 at 6:00 p.m. in Council Chambers for redistricting election wards.
- 9. **2023-278:** Motion to authorize Master Service Agreement Work Assignments for Drainage Design with MP Design Group for WA9-Diamondhead Drive East near Aukai Place in the amount of \$9,000.00, WA10-Hilo Way at Koko Street in the amount of \$9,000.00, WA11-Hilo Way to Hapuna Place in the amount of \$9,000.00 and WA12-Hilo Way West in the amount of \$9,000.00. (ARPA)

10. **2023-280:** Motion to approve payments to Chiniche Engineering & Surveying in the amount of \$837.50 for Canal Dredging, in the amount of \$1,092.50 for GIS in the amount of \$2,570.00 for Noma Drive Improvements and in the amount of \$1,558.00 for Montjoy Creek.
11. **2023-279:** Motion to approve payments to Covington Civil & Environmental, LLC in the amount of \$24,000.00 for Bank Stabilization Project.
12. **2023-283:** Motion to approve payments to Digital Engineering in the amount of \$7,018.75 for Bond Paving Project and in the amount of \$1,621.25 for Beaux Vue Ph 2 Drainage Improvements.
13. **2023-284:** Motion to approve Pay Application Four(4) to JLB Contractors, Inc. in the amount of \$167,840.61 for Diamondhead Drive East and Lily Pond Dredging.
14. **2023-285:** Motion to authorize Master Service Agreement Work Assignments for Drainage Design with Covington Civil & Environmental for WA3-Kaleki Way Drainage Project in the amount of \$71,500.00, in the amount of WA4-Kalae Drainage Project the amount of \$19,500.00, and WA5-Turnberry Drainage Project in the amount of \$51,500.00. (ARPA)
15. **2023-286:** Motion to approve the contract modification form for the Mississippi Gulf Coast Restoration Fund Program for FY20, FY21 and FY
16. **2023-287:** Motion to authorize the City Manager to request the MS Department of Marine Resources reallocate remaining FY22 Tidelands funds in the amount of \$800,000.00 to the FY23 Tidelands Project

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

**MOTION CARRIED UNANIMOUSLY**

**Action Agenda.**

18. **2023-275:** Motion to accept the form of the FY24 Budget, set the public hearing for August 15, 2023 at 6:00 p.m. and approve the advertisement providing public notice of same.

Motion made by Ward 1 Finley, Seconded by Ward 3 Cumberland to accept the form of the FY24 Budget, set the public hearing for August 15, 2023 at 6:00 p.m. and approve the advertisement providing public notice of same.

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

**MOTION CARRIED UNANIMOUSLY**

**Routine Agenda.**

**Claims Payable**

19. Motion to approve Payroll Payables Claims PRCLAIM10164 in the amount of \$1,523.58, PRCLAIM01376 in the amount of \$28,867.27, PRCLAIM010166 in the amount of \$30,210.06 and DKT230867-DKT230876 in the amount of \$56,521.25.

Motion made by Ward 4 Clark, Seconded by Ward 1 Finley to approve Payroll Payables Claims PRCLAIM10164 in the amount of \$1,523.58, PRCLAIM01376 in the amount of \$28,867.27, PRCLAIM010166 in the amount of \$30,210.06 and DKT230867-DKT230876 in the amount of \$56,521.25.

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

**MOTION CARRIED UNANIMOUSLY**

20. Motion to approve Docket of Claims (DKT230877-DKT230916) in the amount of \$884,460.35.

Motion made by Ward 1 Finley, Seconded by Ward 4 Clark to approve Docket of Claims (DKT230877-DKT230916) in the amount of \$884,460.35.

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

**MOTION CARRIED UNANIMOUSLY**

**Department Reports**

Motion made by Ward 1 Finley, Seconded by Councilmember-At-Large Maher to approve the following Reports:

- a. Department Reports

Building

Court

Police

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

**MOTION CARRIED UNANIMOUSLY**

**Public Comments on Non-Agenda Items - None**

**Adjourn/Recess.**

At 7:27 p.m. with no further business to come before the Council, motion made by Ward 4 Clark, Seconded by Councilmember-At-Large Maher to adjourn the meeting.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 1 Finley, 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



City of Diamondhead, MS  
Request for Council Action

TO: Mayor/Council/City Clerk

FROM: S. Finley Ward 1

DATE: 07/10/2023

Ordinance  Resolution  Agreement  Info Only  Work Session  Other

AGENDA LOCATION:  Consent Agenda  Regular Agenda


AGENDA DATE REQUESTED

**ORDINANCE/RESOLUTION CAPTIONS or ISSUE:**

Motion to contribute up to \$40,000.00 for the Dog Park from the General Fund Balance.

**REQUIRED SIGNATURE**

REQUESTED BY:



COUNCIL ACTION:

Approved  Denied  Tabled/Deferred  Info Only Completed:



TO: City Council and City Manager

FROM: J. Pat Rich, Development Coordinator *J. Pat Rich*

DATE: June 28, 2023

SUBJECT: Recommendation from Planning Commission Text Amendment Sign Ordinance Concerning Window Signs

The text amendment will separate window signs into their own category with regulations specific to their usage. The text amendment will accomplish the following: require a permit for window signs, reduce window coverage area from 50% to 25%, prohibit rope lighting within window casements, restrict operation to business hours only.

At its meeting on July 25, 2023, the Planning Commission voted 5-0 to recommend approving the Text Amendment.



Commissioner Be  
Commissioner Brewer  
Commissioner Debrow  
Commissioner Flowers  
Commissioner Harwood  
Commissioner Layel  
Commissioner Nicaud

## AGENDA PLANNING AND ZONING COMMISSION

Tuesday, July 25, 2023

6:00 PM CST

Council Chambers, City Hall  
and via teleconference, if necessary

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### Call to Order

### Statement of Purpose

1. May our decisions today be made with wisdom, careful deliberation and in the best interest of the City of Diamondhead. May we display patience and kindness in our dealings with each other and all who are in attendance and may any decisions made today promote the health, safety and welfare of the citizens of Diamondhead and the enhancement of the City as a whole.

### Pledge of Allegiance

### Roll Call

### Confirmation or Adjustments to Agenda

### Approval of Minutes

2. Approval of June 27, 2023 minutes.

### New Business

3. Bob Barber with Orion Planning to provide an update on the Zoning Code re-write.
4. Teresa and Brian Leatherman, represented by Amber Thomas of Alant Construction, have filed an application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a covered patio (36.26' x 11.4') within 17.9' of the rear property line. The property address is 7518 Augusta Way. The tax parcel number is 067M-2-35-007.000. The property is in an R-1 zoning district. The rear yard setback is 20'. The variance requested for the covered patio is 2.1'. The Case File Number is 202300282.
5. The City of Diamondhead, is proposing a Text Amendment to the Tree Ordinance Article 11. – General Requirements and Restrictions. The proposed text amendment is to increase the preservation of existing trees. The Case File Number is 202300337.
6. The City of Diamondhead will hold a public hearing on a proposed Text Amendment to the Sign Ordinance Article 10.4.10 – Window Signs. The proposed text amendment is to remove “A permanent window sign shall be classified as a wall sign.” Article 10.5.2 On-Premises Attached Signs c; Place a black square in the table in zoning districts C-1, C-2, PFR, T, and I [The black square means a sign permit is required]. Article 10.6 Dimensional Requirements, Number of Signs and Special Conditions; Sign Type #8 Window Signs; Area; “Change 50% to 25% of window area.” Article 10.7 - Exempt Signs, delete “10.c Windows.”, Article 10.10.1 Non-Conforming Existing Signs; Insert “All window signs which are not in conformance with the Ordinance shall be unlawful one (1) year after the passage of the window sign text amendment.” The Case File Number is 202300332.

Passed  
5-0



5000 Diamondhead Circle · Diamondhead, MS 39525  
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 www.diamondhead.ms.gov

PROPOSED TEXT AMENDMENT TO SIGN ORDINANCE-WINDOWS

AMEND Table of Permitted Sign Types; On-Premises Attached; Section 10.4.10 Window Signs-A window sign is a sign painted, glued or otherwise affixed to a window for the purpose of being visible from the exterior of the building. [omit] ~~A permanent window sign shall be classified as a wall sign.~~

AMEND TABLE OF PERMITTED SIGN LOCATIONS; Section 10.5 Signs Permitted by Zoning District; Section 10.5.2 On-Premises Attached Signs c; Place a black square in the table in zoning districts C-1, C-2, PFR, T, and I [The black square means a sign permit is required].

AMEND Section 10.6 DIMENSIONAL REQUIREMENTS, NUMBER OF SIGNS AND SPECIAL CONDITIONS; Sign Type #8 Window Signs; Area; ~~50%~~ [insert 25] of window area.

AMEND Section 10.6 DIMENSIONAL REQUIREMENTS, NUMBER OF SIGNS AND SPECIAL CONDITIONS; Sign Type #8 Window Signs; Special Conditions; ~~none~~ [omit] [insert- Rope lighting of any kind/type within the window casement is prohibited. Window lighting shall only be operational during business hours.

AMEND 10.7 EXEMPT SIGNS c Window; [delete 10.7 c in its entirety]

AMEND 10.10 NON-CONFORMING EXISTING SIGNS; 10.10.1 Existing Non-conforming Uses-All signs which are not in conformance with this Article on the effective date of this ordinance, shall be unlawful after said effective date. [insert "All window signs which are not in conformance with the Ordinance shall be unlawful one (1) year after the passage of the window sign text amendment.

PART II - CODE OF ORDINANCES  
Appendix A - ZONING  
ARTICLE 10. SIGNS

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## **ARTICLE 10. SIGNS<sup>1</sup>**

### **10.1. SCOPE, PURPOSE, LEGAL EFFECT.**

The regulations herein set forth shall apply and govern in all zoning districts as hereinafter provided. No sign or outdoor advertising device shall be erected unless it is in compliance with regulations for the district in which it is located as specified in this Article. For the purpose of this Article, the following sign regulations are established to assure the health, welfare, and safety of the citizens of Diamondhead and to encourage the economy of the city, to protect the public investments in streets and highways to preserve natural beauty, and to protect tax revenues by promoting reasonable, orderly and effective display of outdoor advertising.

(Ord. of 6-2-2015, § 10.1)

### **10.2. DEFINITIONS.**

For the purpose of this Article, the words and terms found herein shall have the meanings respectively ascribed in Section 3.2. All words used in this Article not specifically defined herein shall be given their meanings in normal customary usage.

(Ord. of 6-2-2015, § 10.2)

### **10.3. CONFORMITY AND PERMIT REQUIRED.**

All signs hereafter erected on any lot in any district of the City shall conform to the provisions of this ordinance. It shall be unlawful for any person, contractor or entity to erect, enlarge, rebuild, or structurally alter any sign without first obtaining a permit therefor and paying the requisite permit fee unless a sign is exempt from this permit requirement.

(Ord. of 6-2-2015, § 10.3)

### **10.4. PERMITTED SIGN TYPES ESTABLISHED.**







The following table establishes, defines and illustrates the allowed sign types in the City of Diamondhead. Signs are generally classified into the following categories:




- On-Premises Freestanding Signs.
- On-Premises Attached Signs.
- Off-Premises Freestanding Signs.
- Off-Premises Attached Signs.
- Off-Premises Mobile Signs.

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<sup>1</sup>Editor's note(s)—The content of Article 10 was revised and restated upon adoption of the Ordinance of 6-2-2015.

TABLE OF PERMITTED SIGN TYPES	
<i>On-Premises Freestanding</i>	
<p><b>10.4.1 Open House Sign or Real Estate Signs</b> - Open house signs announce the availability of open house events. Real estate signs advertise the sale of real estate. The signs are temporary in nature and supported by a metal frame with two ground penetrating supports.</p>	
<p><b>10.4.2 Temporary Special Event Banner</b> - Temporary special events banners announce special community events or occasions on the site of the event.</p>	
<p><b>10.4.3 Development Sign</b> - Development signs identify building, development or construction sites and identify the address, development name, general contractor and owner. The purpose of such sign is to facilitate the delivery of materials and services for the period of construction only.</p>	
<p><b>10.4.4 Neighborhood Identification Signs</b> - Neighborhood identification signs include entrance identification for subdivision, multi-family developments, and other similar residential developments. These signs illustrate the development name, description or location only.</p>	
<p><b>10.4.5 Ground-Mounted Monument Signs</b> - A sign which is generally a low profile sign supported by a base having a width of 80% of the sign width, and having little or no space between the bottom of the sign's message area and the top of the base. Includes Ground-Mounted Monument Group signs which accommodate shopping center, office complexes, clusters of businesses or similar arrangements.</p>	

<p><b>10.4.6 Ground-Mounted Pole Signs</b> - A sign which is generally mounted on a supporting pole or pylon or multiple poles or pylons.</p>	
<p><b>10.4.7 Temporary sidewalk or "A" frame sign</b> - A sign which is temporary in nature, that is not secured to the ground, and constructed in a manner as to form an "A" or tent-like shape used for the purpose of advertising on the angular sides.</p>	
<p><i>On-Premises Attached</i></p>	
<p><b>10.4.8 Wall-Mounted Signs</b> - a wall-mounted sign is a sign painted on, attached to, or erected against the wall of a building, structure, canopy or awning with the exposed face of the sign parallel to the plane of such wall or structure and extending not more than 15 inches in thickness. An architecturally integrated mansard sign shall be classified as a wall sign (Added)</p>	
<p><b>10.4.9 Projecting Sign</b> - A projecting sign is a sign which is erected or supported on the wall of a building or other structure and projects from same.</p>	
<p><b>10.4.10 Window Signs</b> - A window sign is a sign painted, glued or otherwise affixed to a window for the purpose of being visible from the exterior of the building. <del>A permanent window sign shall be classified as a wall sign.</del></p>	
<p><i>Off-Premises Freestanding</i></p>	
<p><b>10.4.11 Billboard</b> - Freestanding structure used for outdoor advertising which is designated, intended, or used to advertise or inform and is customarily erected and owned by an outdoor advertising entity for the purpose of advertising space whether by lease or by charitable donation.</p>	
<p><i>Off-Premises Attached</i></p>	

<p><b>10.4.12 Temporary special event banner (off premises)</b> - Temporary special events banners announce special community events or occasions not on the site of the event.</p>	
<p><b>10.4.13 Vehicle Sign</b> - Vehicle signs are attached, painted, or otherwise applied to doors, roof, or side panels of business vehicles and not used for the primary purpose of advertising.</p>	
<p><b>10.4.14 Mobile Billboards</b> - Mobile Billboards shall mean one or more advertising display structures that are mounted upon, painted upon, or otherwise erected on a trailer, truck, automobile, or other vehicle for the primary purpose of advertising. A bus, taxi or similar vehicle used primarily for the purpose of transporting persons or vehicles operated for business purposes where advertising or identifying information is directly related vehicles owners business are excluded from this definition.</p>	

(Ord. of 6-2-2015, § 10.4)

**10.5. SIGNS PERMITTED BY ZONING DISTRICT.**

The permitted location of signs is governed by zoning district. The Table of Permitted Sign Locations sets forth permitted sign location by type. The "■" means a sign permit is required. The symbol "□" means the sign is permitted but exempt from permit. The letter "C" refers to a conditional use approved by the Planning & Zoning Commission. The Preservation (PFR) shall NOT be considered a residential district:

TABLE OF PERMITTED SIGN LOCATIONS										
Sign Type	Zoning District									
	R-1	R-2	R-3	R-4	MH	C-1	C-2	PFR	T	I
10.5.1 On-Premises Freestanding Signs										
a. Open House Sign	□	□	□	□	□	□	□	□	□	□
b. Temporary Special Event Banner	■	■	■	■	■	■	■	■	■	■
c. Development Sign	□	□	□	□	□	□	□	□	□	□
d. Neighborhood Identification Sign	■	■	■	■	■	-	-	-	-	-
e. Ground-mounted Monument Sign	-	-	-	-	-	■	■	■	■	■
f. Ground-mounted Pole Sign	-	-	-	-	-	-	■	-	-	-
g. Temporary sidewalk "A" frame sign	-	-	-	-	-	■	■	■	■	■
10.5.2 On-Premises Attached Signs										
a. Wall-mounted Sign	-	-	-	-	-	■	■	■	■	■



b. Projecting Sign	-	-	-	-	-	■	■	■	■	■
c. Window Sign	-	-	-	-	-	■	■	■	■	■
10.5.3 Off-Premises Freestanding Signs										
a. Outdoor Advertising (Billboard)	-	-	-	-	-	C■	■	-	■	■
10.5.4 Off-Premises Attached Signs										
a. Temporary Sign for Special Event	-	-	-	-	-	■	■	■	■	■
10.5.5 Off-Premises Mobile Sign										
a. Mobile Billboard	-	-	-	-	-	■	■	■	■	■
b. Vehicle Sign	□	□	□	□	□	□	□	□	□	□

(Ord. of 6-2-2015, § 10.5)

**10.6. DIMENSIONAL REQUIREMENTS, NUMBER OF SIGNS AND SPECIAL CONDITIONS.**

The dimensional requirements, number of signs permitted and other special conditions are set forth in the Table of Sign Requirements by Sign Type.

TABLE OF SIGN REQUIREMENTS BY TYPE					
Sign Type	Location	Number	Area	Min/Max Height	Special Conditions
1. Open House	Placed on private property only	1 per lot	3 ft (2)	3' max	Permitted only on weekends from 5 pm Friday until 30 minutes after sunset Sunday
2. Development	Placed facing street on private property	1 per site	32 ft (2) 6 ft (2)	8' max	Installed no more than 15 days prior to the start of construction and removed 30 days after completion of a home or 90 days after completion of a model home
3. Neighborhood Identification	On private or public right of way if approved by Council		36 ft (2)	6' max	Ground mounted only
4. Ground-Mounted Monument	1 per street frontage per lot Setback - 10'	1 per lot	3 ft per lineal foot of building frontage 100 ft (2) max 64 ft (2) 36 ft (2) for 1 District	8' max	For multi-tenant buildings, sign area for each tenant space with frontage may be calculated separately

5. Ground-Mounted Pole	1 per street frontage per lot Setback - 10'	1 per every 300' of frontage of a parcel to a street	3 ft per lineal foot of building frontage 300 ft (2) max per sign	25' max height	
6. Wall-Mounted	Flat against a wall surface	No limit	3 ft (2) per lineal ft of building frontage 150 ft (2) max-80% of building width max		Interstate Frontage Exception - Wall frontage directly adjacent to Interstate 10 shall be allowed additional wall signage at a rate of 3ft (2) per lineal foot of building frontage with 150 ft (2) max to be allocated on the interstate wall only
7. Projecting Signs	Affixed to wall surface	1 per street frontage	-1 ft (2) per lineal foot of building frontage- 100 ft (2) max	-10' min Cornice line max	Projecting signs may not extend more than twenty-four (24) inches beyond a wall surface.
8. Window Signs	Affixed to window	No limit	<del>50%</del> 25%of window area max	n/a	<del>None</del> Rope lighting of any kind/type within the window casement is prohibited. Window lighting shall only be operational during business hours.
9. Temporary Sidewalk or "A" Frame	Sidewalk adjacent to the front of	1 per store front	6 ft (2)	3'	Placement may not obstruct pedestrian traffic

	the building façade				
10. Outdoor Advertising (Billboards)	Separation Radius - 2640' Interstate Access Setback - 500'		350 ft (2) per face, 700 max all faces	25'	Maximum separation between two sign faces shall be 5'; Mounting shall be on a single pole centered in the sign face
11. Temporary Signs for Special Events (on or Off Premises)	Placed on a wall surface or securely mounted with a temporary device so sign is secure in all weather conditions	Max of 2 per event	24 ft (2)	Ground - 4ft Wall - none	Maximum of 30 consecutive days
12. Mobile Billboards	To Be Determined				Display during the hours of 8 am to 5 pm where permitted. Parking of mobile billboards where visible to the public more than 48 hours is prohibited.

(Ord. of 6-2-2015, § 10.6)

### 10.7. EXEMPT SIGNS.

The following types of signs are exempted from the requirements of the Article; except those particular signs that may be classified by the Planning Commission as obscene, dangerous or hazardous, conflicting aesthetically, or that generally do not meet the basic requirements of other Sections of the Article, such as design, maintenance, etc. No permit is required for exempted signs.

- a. Any political sign or poster not exceeding three (3) square feet erected on property by the owner thereof or with the property owner's consent pertaining to a candidacy or issued to be voted upon at any election or referendum, provided such sign or poster shall not be erected more than sixty (60) days prior to such election or referendum and shall be removed with seven (7) days after the referendum, or last such election in which the candidate is eligible. All signs must have the name and contact information for the individual placing the sign.
- b. Vehicle Signs.
- c. ~~Window.~~
- d. Directional (entrance/exit) signs with a maximum height of 5' and maximum copy area of 6 square feet.
- e. Signs not exceeding one (1) square foot in area and bearing only property number, post office box numbers, names of occupants of premises, or other identification of premises not having commercial connotations are exempted from the regulations.
- f. Flags and insignia of any government except when displayed in connection with commercial promotions are exempted from these regulations.
- g. Legal notice or identification, information or directional signs, or signs required by governmental bodies are exempted from these regulations.
- h. Integral decorative or architectural features of building except letters, trademarks, moving parts, or moving lights shall be permitted.
- i. Signs directing and guiding traffic and parking property, but bearing no advertising matter shall be permitted.
- j. Open House or Real Estate Signs when and where permitted.
- k. Garage sale signs not exceeding 1.5 square feet and placed between 5:00 p.m. on Friday and removed 30 minutes after sunset on the following Sunday, plus one (1) additional day should a holiday fall on Friday or Monday.
- l. On-site church directory or bulletin board not exceeding forty-eight (48) square feet shall be permitted.
- m. Signs erected by the Diamondhead Property Owners Association to identify community facilities or provide community announcements, provided such signs do not exceed thirty-seven (37) square feet.

(Ord. of 6-2-2015, § 10.7)

### 10.8. PROHIBITED SIGNS AND SIGN DISPLAY CONDITIONS.

The following signs and sign display conditions are prohibited:

- a. Vehicle signs used for the primary purpose of advertising.
- b. Signs attached to the following:

- i. The roof or top of a building or structure.
- ii. Out-buildings or appurtenant structures.
- iii. Utility poles.
- iv. Fences.
- v. Trees, vehicles (except for identification of business, see Section 10.5.6) and added to any existing sign except those signs originally designed for group advertising.
- c. Signs located on city, county, state, or other government property, including public lands, rights-of-way, easements, or similar locations except those specifically exempted in Section [10.]7g.
- d. No sign shall be constructed within fifty (50) feet of a residential district and must face away from the residential area (lighting must be indirect or diffused).
- e. Signs that [use] flashing, animated, moving or strobe illumination.
- f. Signs that use red, amber, green and red and blue colored lights which may be misinterpreted as an emergency, police and traffic control identification.
- g. Signs that exhibit confusing form, color, or lighting that may affect normal visibility of traffic.
- h. Signs that allow trash or debris to exit in such a manner as to be considered a fire and/or health hazard.
- i. Portable signs other than sidewalk signs, except in the case of a natural disaster where a sign has been damaged, the use of portable or mobile signs shall be permitted until the damaged sign is repaired or replaced or for a period of three (3) months.
- j. Any sign which by reason of size, shape, content, coloring, location or manner of illumination interferes with driver visibility of any traffic control device or sign; or any sign which resembles any traffic control or emergency device or sign which creates any traffic hazard.
- k. Electronic or mechanically changing messages are prohibited except in C-2 zones.

(Ord. of 6-2-2015, § 10.8)

## **10.9. GENERAL REQUIREMENTS, DISPLAY CONDITIONS, AND DESIGN.**

- 10.9.1 Signs not to be Primary Land Use. Signs shall be permitted or sited only when the property, lot, or parcel upon which the sign is to be placed houses a structure or active land use in conformance with the provisions of the zoning regulations. For clarification and administrative purposes, a vacant lot shall not contain any additional sign above that which already exist, and a nonconforming land use shall not contain any additional sign above that which may already exist.
- 10.9.2 Ingress, Egress. No sign shall be erected as to impede or prevent free ingress or egress from any door, window, or fire escape and no sign of any kind shall be attached to a standpipe or fire escape.
- 10.9.3 Site Line Obstruction. Signs shall not interfere with driver visibility of any traffic control device or with the visibility of the street, road, and thoroughfare or with the expressway itself.
- 10.9.4 Building Codes. Unless otherwise provided in these regulations, all signs shall be constructed and erected in accordance with the building and electrical codes of the City.
- 10.9.5 Design and Maintenance. All signs shall be designed according to generally accepted engineering practices to withstand wind pressures and to ensure that loads are distributed to structural supports to avoid

overstress and all signs must be reasonably and properly anchored to avoid being swept away by wind or water.

- i. All signs over ten (10) feet in height are required to have a set of plans or drawings, signed and stamped by a Mississippi Registered Engineer or Architect certified to meet wind load requirements as per current adopted Building Codes. Also, all signs shall be maintained and in good repair and appearance.
- ii. Ground signs shall incorporate architectural features and materials of corresponding building. The base of all ground signs and directional signs shall be fully landscaped with planters and/or shrubbery in all directions not less than the dimensional width of the base. All landscaping shall be properly maintained.

#### 10.9.6 Illumination.

- i. All illuminated signs shall be permanently wired and constructed in accordance with the city's adopted electric code. Special care shall be given to ground fault connections, underground wire, and/or conduit with proper circuit breakers. Connecting wire from sign to permanent outlet shall not exceed four (4) feet.
- ii. Electronic reader boards shall constitute no more than thirty (30) percent of the overall signage surface area and are limited to Ground Mounted Signs only.
- iii. Point sources of illumination shall be shielded from view and not visible to the public.

10.9.7 Signs shall be maintained in standard condition. Sign surface areas which remain vacant or are abandoned for a period greater than sixty (60) days shall be removed in their entirety.

10.9.8 Billboards shall be subject to an annual inspection to ensure safety and compliance with the provisions of these and other regulations of the city, subject to an annual inspection fee established by the city council.

(Ord. of 6-2-2015, § 10.9)

## 10.10. NONCONFORMING EXISTING SIGNS.

10.10.1 *Existing Nonconforming Uses.* All signs which are not in conformance with this Article on the effective date of this ordinance, shall be unlawful after said effective date. **All window signs which are not in conformance with the Ordinance shall be unlawful one (1) year after the passage of the window sign text amendment.**

10.10.2 *Notification of nonconformity.* Upon a determination that a sign does not conform to this Article, the building inspector shall use reasonable efforts to so notify either personally or in writing the user or owner of the property on which the sign is located of the following:

- i. The sign's nonconformity.
- ii. Whether the sign is eligible for characterization either as legal nonconforming or unlawful.
- ii. Whether the sign is eligible for characterization as "legal conforming." Any sign located within the city limits on the date Ordinance No. 2012-019 is adopted [October 15, 2012], or located in an area on such date this is thereafter annexed to the city, which does not conform to the provisions of this Article, but which was legally erected prior to the date this ordinance is adopted is eligible for a characterization as a "legal nonconforming" sign.

10.10.3 *Loss of legal nonconforming status.* Except when grandfather rights are provided in (d) [10.10.4] below, a legal nonconforming designation is lost if:

- i. The sign is altered in any way in structure or copy (except for changeable copy signs and normal maintenance), which tends to or makes the sign less in compliance with the requirements of the Article than it was before the alteration.
- ii. The sign is relocated to a position making it less in compliance with the requirements of this Article.
- iii. Changed to another nonconforming sign.
- iv. Expanded in width or breath. In such cases where the Mississippi Department of Transportation allows the sign in question to be extended in height to clear existing vegetation, such will be permitted to be extended in height to conform to Mississippi Department of Transportation regulations and/or direction.
- v. Re-established after deterioration, damage or destruction of more than fifty (50) percent of the value, or fifty (50) percent of the area of the sign.

10.10.4. On the happening of any of subsection C.[10.10.3] (i), (ii), (iii), (iv) or (v) the sign shall be immediately brought into compliance with this Article with a new permit secured therefor, or shall be removed.

(Ord. of 6-2-2015, § 10.10)

Editor's note(s)—Subsection 10.10.4 was originally set forth as subsection d., but has been changed at the editor's discretion.

### **10.11. ENFORCEMENT, VIOLATIONS AND PENALTIES.**

- a. The Zoning Administrator shall enforce this ordinance. He may be provided the assistance of such other persons as the mayor and city council or city manager may direct.
- b. If the Zoning Administrator finds that any provisions of the ordinance are being violated he shall:
  - i. Notify in writing the property owner, sign owner or person(s) responsible for such violation, indicating the nature of the violation and order the action necessary to correct it; or
  - ii. Take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.
- c. Violation of the provisions of the ordinance or failure to comply with any of its requirements shall constitute a misdemeanor [Ordinance No. 2012-027]. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be punished as provided by law. The owner or tenant of any building, structure, premises, or part thereof, any architect, builder, contractor, agent or other person who commits, participates in, assists in, or maintains such violations may be found guilty of a separate offense and suffer the penalties herein provided.
- d. Variance requests shall follow the procedures set forth in Section 2.6 Variance Procedure in the City of Diamondhead Zoning Ordinance.
- e. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to remedy any violation. Violations which are not remedied, or signs not removed within the designated time are subject to removal by the City, without liability. All costs associated with the removal of the sign by the City shall be the responsibility of the property owner and/or sign owner.
- f. Any sign which is found to be in violation of the Article shall be removed, or the violation otherwise remedied, by the property owner or sign owner within thirty (30) days after the registered letter is provided by the City to the property owner. Violations which are not remedied, or signs not removed, within the thirty (30) days are subject to removal by the City, without liability. Reasonable labor expenses therefor shall be endured either separately or jointly by the property owner or sign owner.



- 
- g. Signs placed on any City-owned building, structure, or lot or within the right-of-way of any public road or easement without a permit issued therefor shall be subject to immediate removal by the City.

(Ord. of 6-2-2015, § 10.11)

**NOTICE OF PUBLIC HEARING  
PLANNING AND ZONING COMMISSION  
DIAMONDHEAD, MS**

The City of Diamondhead will hold a public hearing on a proposed Text Amendment to the Sign Ordinance Article 10.4.10 – Window Signs. The proposed text amendment is to remove “A permanent window sign shall be classified as a wall sign.” Article 10.5.2 On-Premises Attached Signs c; Place a black square in the table in zoning districts C-1, C-2, PFR, T, and I [The black square means a sign permit is required]. Article 10.6 Dimensional Requirements, Number of Signs and Special Conditions; Sign Type #8 Window Signs; Area; “Change 50% to 25% of window area.” Article 10.7 - Exempt Signs, delete “10.c Windows.”, Article 10.10.1 Non-Conforming Existing Signs; Insert “All window signs which are not in conformance with the Ordinance shall be unlawful one (1) year after the passage of the window sign text amendment.” The Case File Number is 202300~~274~~: **0332**

In accordance with Article 2.8.2, the City Council shall have jurisdiction with respect to all Text Amendments and Rezoning. The Planning Commission shall review and submit a recommendation to the City Council on Text Amendments and Rezoning.

The Planning and Zoning Commission will consider this application at its next regularly scheduled meeting on **Tuesday, July 25, 2023, at 6:00 p.m.** The public hearing will be held at Diamondhead City Hall in the Council Chambers at 5000 Diamondhead Circle in Diamondhead, MS 39525. Interested members of the public are invited to attend. This meeting will also be live streamed for your convenience.

If you have any questions or comments or would like to review the application, you may contact the Building Department at the above address and/or at 228-222-4626.



TO: City Council and City Manager

FROM: J. Pat Rich, Development Coordinator

DATE: June 28, 2023

SUBJECT: Recommendation from Planning Commission Text Amendment Sign Ordinance Concerning Window Signs

The text amendment will separate window signs into their own category with regulations specific to their usage. The text amendment will accomplish the following: require a permit for window signs, reduce window coverage area from 50% to 25%, prohibit rope lighting within window casements, restrict operation to business hours only.

At its meeting on July 25, 2023, the Planning Commission voted 5-0 to recommend approving the Text Amendment.

A TEXT AMENDMENT TO THE ZONING ORDINANCE AMENDING  
Article X – Signs

A resolution of the Mayor and City Council of the City of Diamondhead amending Ordinance No. 2012-019 Article 10 – Signs.

WHEREAS, the proposed text amendment is amend the Sign Ordinance to establish requirements for window signs. The proposed changes are AMEND Table of Permitted Sign Types; On-Premises Attached; Section 10.4.10 Window Signs - Remove “A permanent window sign shall be classified as a wall sign.” Section 10.5 Signs Permitted by Zoning District; Section 10.5.2 On-Premises Attached Signs c; Place a black square in the table in zoning districts C-1, C-2, PFR, T, and I. Section 10.6 Dimensional Requirements, Number of Signs and Special Conditions; Sign Type #8 Window Signs; Area; Remove “50%” and insert 25% of window area max.” Special Conditions; Remove “none” and insert “Rope lighting of any kind/type within the window casement is prohibited. Window lighting shall only be operational during business hours.” Section 10.7 Exempt Signs; Delete “c. Window.” Section 10.10 Non-Conforming Existing Signs; 10.10.1 add “All window signs which are not in conformance with the Ordinance shall be unlawful one (1) year after the passage of the window sign text amendment.”

NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY, that the City Council adopted the proposed text amendment as stated above.

I HEREBY CERTIFY THAT THE ABOVE AND FOREGOING RESOLUTION WAS ADOPTED IN THE AFFIRMATIVE BY THE FOLLOWING VOTE OF COUNCIL OF THE CITY OF DIAMONDHEAD ON THE 1ST DAY OF AUGUST, 2023.

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

\_\_\_\_\_  
MAYOR NANCY DEPREO

ATTEST: \_\_\_\_\_  
Jeannie Klein, City Clerk



DIGITAL ENGINEERING & IMAGING, INC.

July 24, 2023

Mr. Jon McCraw  
Interim City Manager  
City of Diamondhead  
5000 Diamondhead Circle  
Diamondhead, MS 39525

Re: City of Diamondhead  
Bond Paving Project (Bid 2023-005)

Mr. McCraw:

We have reviewed the bids received on July 18, 2023, for the above-mentioned project. In total, two (2) bids were received and checked for errors. Any mathematical errors found were corrected on the Bid Tabulation.

The apparent responsive low bid was submitted by Warren Paving, Inc. in the amount of \$3,339,408.85. After reviewing the bid proposal submitted Warren Paving, Inc., we found it to be in order. All items were submitted as specified, and all addendums were acknowledged.

We recommend award of the contract to Warren Paving, Inc., based on the approval of the City of Diamondhead. Should you have questions or need additional information, please contact our office.

  
Sincerely  
Digital Engineering

John M. Stein, P.E.  
Manager of Engineering Operations

Attachments

CITY OF DIAMONDHEAD  
 DIAMONDHEAD BOND PAVING PROJECT-  
 Bid Date: July 18, 2023

Warren Paving, Inc.  
 P.O. Box 2545  
 Gulfport, MS 39505  
 228-896-8003  
 02932-SC

Huey P. Stockstill, LLC  
 P.O. Box 758  
 Picayune, MS 39466  
 601-798-2981  
 21258-MC

Certificate of Responsibility Number:

ITEM NO.	DESCRIPTION	UNIT	EST QTY	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
<b>Part 1- Bond Paving Project</b>							
1	MOBILIZATION	LS	1	\$80,000.00	\$80,000.00	\$270,000.00	\$270,000.00
2	PRE-CONSTRUCTION VIDEO	LS	1	\$615.00	\$615.00	\$6,000.00	\$6,000.00
3	CONSTRUCTION LAYOUT	LS	1	\$12,990.00	\$12,990.00	\$10,000.00	\$10,000.00
4	MAINTENANCE OF TRAFFIC	LS	1	\$72,500.00	\$72,500.00	\$85,000.00	\$85,000.00
5	CLEAN-UP, DRESSING & SODDING	LS	1	\$11,500.00	\$11,500.00	\$10,000.00	\$10,000.00
6	ASPHALTIC CONCRETE PAVEMENT, 1-1/2" OVERLAY	TON	16,620	\$142.50	\$2,368,350.00	\$140.00	\$2,326,800.00
7	COLD PLANING/DISPOSAL OF ASPHALTIC CONCRETE PAVEMENT	SY	89,159	\$2.95	\$263,019.05	\$2.65	\$236,271.35
8	FULL DEPTH PATCH	SY	57	\$335.00	\$19,095.00	\$185.00	\$10,545.00
9	APSHALTIC CONCRETE LEVELING COURSE, 0" - 1 1/2"	SY	1,000	\$21.00	\$21,000.00	\$14.00	\$14,000.00
10	1 1/2" MILL PATCH	SY	2,661	\$38.00	\$101,118.00	\$29.00	\$77,169.00
11	REMOVE UNSUITABLE MATERIAL & REPLACE WITH SELECT GRANULAR BACKFILL (FOR ROADWAY & DRAINAGE STRUCTURES) FM, AH, CONTRACTOR FURNISHED	CY	50	\$150.00	\$7,500.00	\$70.00	\$3,500.00
12	REMOVE UNSUITABLE MATERIAL AND REPLACE WITH 610 LIMESTONE (FOR ROADWAY)	CY	50	\$240.00	\$12,000.00	\$170.00	\$8,500.00
13	ENVIRONMENTAL PROTECTION & EROSION CONTROL	LS	1	\$700.00	\$700.00	\$500.00	\$500.00
<b>TOTAL BASE BID UNIT PRICE SUM - PART 1</b>				<b>\$2,970,387.05</b>		<b>\$3,058,285.35</b>	

CITY OF DIAMONDHEAD  
 DIAMONDHEAD BOND PAVING PROJECT-  
 Bid Date: July 18, 2023

Warren Paving, Inc. P.O. Box 2545 Gulfport, MS 39505 228-896-8003 02932-SC	Huey P. Stockstill, LLC P.O. Box 758 Picayune, MS 39466 601-798-2981 21258-MC
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Certificate of Responsibility Number:

ITEM NO.	DESCRIPTION	UNIT	EST QTY	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
<b>Part 2 - Diamondhead Drive Pavement Marking Plans</b>							
1	4" WHITE PLASTIC SOLID STRIPE	LF	157,020	\$1.10	\$172,722.00	\$1.00	\$157,020.00
2	8" WHITE PLASTIC DASHED STRIPE	LF	2,700	\$1.10	\$2,970.00	\$1.00	\$2,700.00
3	4" WHITE PLASTIC DASHED STRIPE	LF	4,275	\$1.10	\$4,702.50	\$1.00	\$4,275.00
4	CONTINENTAL CROSSWALK, WHITE PLASTIC	SF	144	\$11.00	\$1,584.00	\$10.00	\$1,440.00
5	8" WHITE PLASTIC SOLID PARKING LINES	LF	600	\$6.65	\$3,990.00	\$6.00	\$3,600.00
6	4" WHITE PLASTIC SOLID PARKING LINES	LF	702	\$6.65	\$4,668.30	\$6.00	\$4,212.00
7	4" YELLOW PLASTIC SOLID STRIPE	LF	77,340	\$1.10	\$85,074.00	\$1.00	\$77,340.00
8	4" WHITE PLASTIC HATCH FOR NO PARKING AREAS	LF	180	\$6.65	\$1,197.00	\$6.00	\$1,080.00
9	4" BLUE PLASTIC HATCH FOR ADA NO PARKING AREAS	LF	130	\$11.00	\$1,430.00	\$10.00	\$1,300.00
10	24" WHITE PLASTIC STOP BAR	LF	90	\$13.50	\$1,215.00	\$12.00	\$1,080.00
11	BLUE PLASTIC ADA PARKING SYMBOL	EA	4	\$560.00	\$2,240.00	\$500.00	\$2,000.00
12	WHITE PLASTIC TURN ARROW	EA	5	\$335.00	\$1,675.00	\$300.00	\$1,500.00
13	BIKE LANE SYMBOL, PLASTIC	EA	180	\$450.00	\$81,000.00	\$400.00	\$72,000.00
14	FLEX POST DILEANATOR	EA	22	\$51.00	\$1,122.00	\$45.00	\$990.00
15	REMOVE PORTION OF EXISTING WHITE STRIPE	SF	312	\$11.00	\$3,432.00	\$10.00	\$3,120.00
<b>TOTAL BASE BID UNIT PRICE SUM - PART 2</b>					<b>\$369,021.80</b>		<b>\$333,657.00</b>

<b>TOTAL BASE BID PART 1 + TOTAL BASE BID PART 2</b>	<b>\$3,339,408.85</b>	<b>\$3,391,942.35</b>
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THIS IS TO CERTIFY THAT THE TABULATION OF BIDS SHOWN HEREIN IS ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF

  
 John M. Stein, P.E. 7/24/23



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

**STATE OF MISSISSIPPI  
COUNTY OF HINDS**

**MDEQ AGREEMENT NO. 454-2-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 “Stormwater Improvement Plan” (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 **\$1,743,960.48**, with said amount broken down as follows:

- i. MCWI Grant Funds shall not exceed **\$871,980.24**;
- 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 **\$871,980.24**;
- 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 **\$69,758.42**. 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 **Eight Hundred Seventy-One Thousand Nine Hundred Eighty Dollars and Twenty-Four Cents (\$871,980.24)** (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

**Stormwater Improvement Plan**

#### 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 upgrading and/or replacing stormwater piping, replacement of inlets, ditch restoration and armoring, and associated appurtenances along Diamondhead Drive and near Ahuli Drive. The Project also includes replacement of a culvert along Bayou Drive and installation of riprap and ditch grading near East Aloha 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 October 30, 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 November 20, 2023, advertise each construction contract for bids;

- d. On or about January 4, 2024, 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.



**EXHIBIT "C"****WORK ASSIGNMENT****WORK ASSIGNMENT NO 13**  
(Hilo Way Drainage)

PROJECT NUMBER: - \_\_\_\_\_

This Work Assignment is executed in accordance with the Master Services Agreement entered into by the City of Diamondhead, Mississippi and Machado Patano, PLLC on October 29<sup>th</sup>, 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**

The Scope of Work is as follows: The scope of work will be in accordance with Machado Patano proposal dated 7.26.23 WA13- Hilo Way Drainage.

**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 October 28, 2024 at 11:59 P.M. CDT. However, the Engineer may not begin work prior to receiving a Notice to Proceed.

**DBEGOAL**

*The DBE goal established for this Work Assignment shall be N/A %*

**KEYPERSONNEL**

Principal in Charge  
Sr. Professional Engineer  
Professional Engineer  
Professional Engineer

Gerrod Kilpatrick, P.E.  
Nick Moody, P.E.  
Ben Sellers, P.E.  
Jason Polite, P.E.

**PROGRESS SCHEDULE**

M | P will complete this scope of work within 10 working days from the Notice to Proceed

MAXIMUM ALLOWABLE COST

Contract Maximums:

[Use for Labor Hour/Unit Cost Work Assignments]

Under no circumstances shall the amount payable by the City for this assignment exceed \$ 10,000 (Total of all Charges) without the prior written consent of both parties. See attached labor estimate. The Labor Rates have been identified in Table 1: Rate Schedule for Labor Hours.

Table 1: Rate Schedule for Labor Hours

NAMES	LABOR CLASSIFICATION	RATE
Gerrod Kilpatrick, P.E.	Principal Engineer	\$162
Brad Jones, AIA	Principal Architect	\$145
Fernanda Silva, AIA	Principal Architect	\$145
Nick Moody, P.E.	Sr. Professional Engineer (Civil)	\$145
Tyler Able	Project Engineer (Mechanical)	\$95
Jason Polite, EI	Project Engineer (Civil)	\$95
Kenneth Beverin	Project Engineer (Electrical)	\$95
Vanessa Hemingway, AIA	Project Architect	\$95

Both parties hereto represent that they have authority to enter into Work Assignment No. 13, 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

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

WITNESS this my signature in execution hereof, this the 26<sup>th</sup> day of July, 2023.

By:

*Gerrod Kilpatrick*

\_\_\_\_\_

Gerrod Kilpatrick, P.E.,

*Brad Patano*

ATTEST: \_\_\_\_\_

July 26, 2023

Mr. Jon McCraw  
City Manager  
5000 Diamondhead Circle  
Diamondhead, MS 39525

VIA EMAIL: JMcCraw@diamondhead.ms.gov

RE: Hilo Way Drainage. – WA13  
Diamondhead, MS 39525

Jon:

Per your request and our recent conversations, we are pleased to provide you with a proposal for professional engineering services on the above-referenced project. We have prepared a scope of work and fee proposal for your review. Please see below:

**I. SCOPE OF WORK**

**Task 1 –Civil Design Phase Services**

M | P will provide a drainage design of the drainage area at Hilo Way.

Civil Design Scope shall include:

- Storm Drainage Design including trench drains
- Grading and drainage along the route
- Plan and Profiles sheets of proposed design
- Erosion control Plan
- Overall Utility Plan
- Obtain necessary Stormwater Permits
- Construction Details
- Technical Specifications
- Provide necessary documentation for ARPA Reimbursement

**Task 2 - Provide Bid & Construction Phase Services (CPS)**

1. M|P will attend the Pre-Bid Meeting.
2. M|P will attend Bid Opening and prepare certified bid tabulation.
3. M|P will attend the Pre-Construction Conference.
4. M|P will conduct monthly (or as needed) progress meetings with the contractor and owner.
5. M|P will attend any additional project specific meetings requested by the owner.
6. M|P will review construction submittals.
7. Field and respond to construction “Request for Information” (RFI’s) from the Contractor.

- 8. M|P will review monthly pay estimates, verify work complete, and approve pay applications.
- 9. Perform periodic inspections of construction activities to assure engineered documents are being adhered to by the Contractor. One site inspection will be performed per week at a minimum of 1-2 hours per visit during the duration of the Construction. Inspection logs will be prepared, including photographs, and will be provided to the Client. M | P will utilize our construction software platform, Procore, for this project. A 60 day construction time frame is anticipated
- 10. Perform one (1) substantial completion inspection and provide a punch list for work items to the Contractor.
- 11. Perform one (1) final inspection at the completion of the punch list items by the Contractor.

**II. DESIGN FEE PROPOSAL**

Task 1 Civil Design Phase	\$7,000
Task 2 Bid & Construction Phase	\$3,000
<b>Total Fee</b>	
	<b>\$ 10,000</b>

**III. ASSUMPTIONS**

- Professional will provide Adobe PDF files to the Client.

**IV. EXCLUSIONS (available at additional cost or at M|P Standard Hourly and Reimbursement Schedule)**

- Printing of documents (other than that stated in the assumptions)
- Shipping cost
- DMR or USCOE 404 Wetland Permitting
- Mechanical Engineering
- Landscape Architecture Design
- Irrigation Design
- Structural Engineering Design
- Permitting Fees

We appreciate the opportunity to provide our services and look forward to working with you on this project. Should you have any questions or comments, please do not hesitate to contact me.

Respectfully submitted,

**Machado | Patano, PLLC**  
**M|P Design Group, PLLC**



Gerrod Kilpatrick, P.E.  
*Principal*

The Terms and Conditions of this agreement are accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed or typed name

\_\_\_\_\_ Title \_\_\_\_\_ Date

Machado Patano		Scope	Contact	Phone											
Activity Type/ Task	Type	Project Status/ Resource	PM / Reference	Task Status	Est Start Date	Est Comp Date	Act Start Date	Act Comp Date	% Dist	Hours	Resource Hours/ Units	Billing Rate	Contract	Resource Contract	
<b>Hilo Way Drainage</b>		<b>Active</b>	<b>GWK</b>								<b>116.0</b>	<b>116.0</b>		<b>10,060</b>	
Labor	R	Principal Engineer	Gerrod W. Kilpatrick	Principal							12.0	135.00		1,620	
Labor	R	Sr. Project Manager	Nicholas W. Moody	Project Manager							4.0	105.00		420	
Labor	R	Project Engineer	Ben Sellers	Civil							60.0	105.00		6,300	
Labor	R	Project Engineer	Jack Schmidt	Civil								75.00		0	
													<b>Civil Total</b>	<b>8,340</b>	
Labor	R	Professional Land Surveyor	Greg Thompson	Survey							8.0	75.00		600	
Labor	R	Survey Crew Chief	Aaron Liles	Survey							16.0	35.00		560	
Labor	R	Instrument Person	Eddie Vo	Survey							16.0	35.00		560	
													<b>Survey Total</b>	<b>1,720</b>	

# CHANGE ORDER

Item No.7.

No. 005

DATE OF ISSUANCE: July 26, 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:**

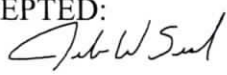
**Description:** Add 46 calendar days to the contract time.


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

CHANGE IN CONTRACT PRICE:
Original Contract Price \$ 729,975.00
Net Increase (Decrease) from previous Change Orders No. <u>0</u> to <u>4</u> : \$ 0.00
Contract Price prior to this Change Order: \$ 729,975.00
Net increase (decrease) of this Change Order: \$ 0
Contract Price with all approved Change Orders: \$ 729,975.00

CHANGE IN CONTRACT TIMES:
Original Contract Times: 90 Calendar Days Substantial Completion: December 17, 2022 Ready for final payment: 30 Days (days or dates)
Net change from previous Change Orders No. <u>0</u> to No. <u>4</u> : Substantial Completion: 226 Ready for final payment: 0 (days)
Contract Times prior to this Change Order 181 Calendar Days Substantial Completion: : June 30, 2023 Ready for final payment: 30 Days (days or dates)
Net increase (decrease) this Change Order: Substantial Completion: 46 Ready for final payment: 0 (days)
Contract Times with all approved Change Orders: Substantial Completion: September 15, 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)

RECOMMENDED:  
By:   
ENGINEER (Authorized Signature)

APPROVED:  
By: \_\_\_\_\_  
OWNER (Authorized Signature)

Date: 7/26/23

Date: 7/26/23

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

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Item No.8.

**Commercial District Transformation Project Phase I**

CONTRACTOR'S BID TABULATION  
 BIDS RECEIVED JULY 7, 2023 UNTIL 10:00 A.M., LOCAL TIME  
 BY THE CITY OF DIAMONDHEAD  
 5000 DIAMONDHEAD CIRCLE, DIAMONDHEAD, MS 39525

Base Bid				Engineer Estimate		Bottom to Top LLC CoR #23104-MC		Moran Hauling Inc. CoR #09083-MC	
Item No.	Description	Unit	Estimated Quantity	Unit Price	Amount	Bid Unit Price	Bid Amount	Bid Unit Price	Bid Amount
202-B009	REMOVAL OF ASPHALT PAVEMENT, ALL DEPTHS	SY	2,083	\$ 8.00	\$ 16,664.00	\$ 8.00	\$ 16,664.00	\$ 6.75	\$ 14,060.25
202-B087	REMOVAL OF CONTINUOUSLY REINFORCED CONCRETE PAVEMENT, ALL DEPTHS	SY	235	\$ 10.00	\$ 2,350.00	\$ 10.00	\$ 2,350.00	\$ 6.75	\$ 1,586.25
202-B013	REMOVAL OF BASE (LIMESTONE / GRAVEL), ALL DEPTHS	SY	3,191	\$ 5.00	\$ 15,955.00	\$ 10.00	\$ 31,910.00	\$ 2.00	\$ 6,382.00
503-C010	SAW CUT, FULL DEPTH (ASPHALT)	LF	320	\$ 15.00	\$ 4,800.00	\$ 8.00	\$ 2,560.00	\$ 10.50	\$ 3,360.00
503-C010	SAW CUT, FULL DEPTH (CONCRETE)	LF	55	\$ 15.00	\$ 825.00	\$ 8.00	\$ 440.00	\$ 10.50	\$ 577.50
202-B191	REMOVAL OF PIPE, 8" AND ABOVE	LF	230	\$ 5.00	\$ 1,150.00	\$ 5.00	\$ 1,150.00	\$ 5.25	\$ 1,207.50
202-A001	CLEARING AND GRUBBING	LS	1	\$ 20,000.00	\$ 20,000.00	\$ 76,000.00	\$ 76,000.00	\$ 10,000.00	\$ 10,000.00
L00098	REMOVE AND RESET, MAILBOX	EA	3	\$ 350.00	\$ 1,050.00	\$ 300.00	\$ 900.00	\$ 260.00	\$ 780.00
907-630-0004	REMOVE AND RESET, SIGN	EA	3	\$ 300.00	\$ 900.00	\$ 300.00	\$ 900.00	\$ 260.00	\$ 780.00
203-EX001	BORROW EXCAVATION, AH, FME, CLASS B1	CY	4,400	\$ 15.00	\$ 66,000.00	\$ 12.00	\$ 52,800.00	\$ 16.75	\$ 73,700.00
203-G001	EXCESS EXCAVATION, FM, AH (TO BE USED AS DIRECTED)	CY	800	\$ 8.00	\$ 6,400.00	\$ 10.00	\$ 8,000.00	\$ 6.75	\$ 5,400.00
206-A001	STRUCTURE EXCAVATION	CY	2,200	\$ 6.00	\$ 13,200.00	\$ 15.00	\$ 33,000.00	\$ 6.75	\$ 14,850.00
216-A001	SOLID SODDING	SY	8,500	\$ 6.00	\$ 51,000.00	\$ 7.20	\$ 61,200.00	\$ 6.00	\$ 51,000.00
234-A001	TEMPORARY SILT FENCE	LF	5,200	\$ 5.00	\$ 26,000.00	\$ 3.57	\$ 18,564.00	\$ 4.50	\$ 23,400.00
237-A002	WATTLES, 20"	LF	2,400	\$ 6.00	\$ 14,400.00	\$ 5.43	\$ 13,032.00	\$ 6.25	\$ 15,000.00
304-F002	SIZE 610 CRUSHED STONE BASE	TON	4,840	\$ 70.00	\$ 338,800.00	\$ 67.40	\$ 326,216.00	\$ 93.02	\$ 450,216.80
403-A001	12.5-MM, HT, ASPHALT PAVEMENT	TON	760	\$ 160.00	\$ 121,600.00	\$ 191.19	\$ 145,304.40	\$ 201.00	\$ 152,760.00
403-A013	9.5-MM, HT, ASPHALT PAVEMENT	TON	760	\$ 160.00	\$ 121,600.00	\$ 195.24	\$ 148,382.40	\$ 205.00	\$ 155,800.00
501-B005	8" PLAIN CEMENT CONCRETE PAVEMENT, BROOM FINISH	SY	92	\$ 85.00	\$ 7,820.00	\$ 108.00	\$ 9,936.00	\$ 101.50	\$ 9,338.00
406-A002	COLD MILLING OF BITUMINOUS PAVEMENTS, ALL DEPTH	SY	300	\$ 15.00	\$ 4,500.00	\$ 12.00	\$ 3,600.00	\$ 12.00	\$ 3,600.00
603-CA004	15" REINFORCED CONCRETE PIPE, CLASS III, RUBBER TYPE GASKETS	LF	54	\$ 45.00	\$ 2,430.00	\$ 41.74	\$ 2,253.96	\$ 62.50	\$ 3,375.00
603-CA012	18" REINFORCED CONCRETE PIPE, CLASS III, RUBBER TYPE GASKETS	LF	2,003	\$ 50.00	\$ 100,150.00	\$ 49.38	\$ 98,908.14	\$ 65.00	\$ 130,195.00
603-CE002	22"x13" REINFORCED CONCRETE ARCH PIPE, CLASS III, RUBBER TYPE GASKETS	LF	1,297	\$ 60.00	\$ 77,820.00	\$ 65.58	\$ 85,057.26	\$ 85.00	\$ 110,245.00
603-CE008	29"x18" REINFORCED CONCRETE ARCH PIPE, CLASS III, RUBBER TYPE GASKETS	LF	427	\$ 75.00	\$ 32,025.00	\$ 86.30	\$ 36,850.10	\$ 105.00	\$ 44,835.00
603-CB003	18" REINFORCED CONCRETE END SECTION	EA	1	\$ 600.00	\$ 600.00	\$ 870.00	\$ 870.00	\$ 1,180.00	\$ 1,180.00
603-CF003	29"x18" REINFORCED CONCRETE ARCH END SECTION	EA	2	\$ 750.00	\$ 1,500.00	\$ 1,110.00	\$ 2,220.00	\$ 1,307.08	\$ 2,614.16
603-PA010	6' x 4' PRECAST CONCRETE BOX CULVERT	LF	162	\$ 550.00	\$ 89,100.00	\$ 1,065.00	\$ 172,530.00	\$ 696.00	\$ 112,752.00
603-PB008	6' x 4' PRECAST CONCRETE BOX CULVERT, END SECTION	EA	4	\$ 2,500.00	\$ 10,000.00	\$ 4,750.00	\$ 19,000.00	\$ 14,200.00	\$ 56,800.00
815-A007	LOOSE RIPRAP, SIZE 300	TON	600	\$ 100.00	\$ 60,000.00	\$ 84.20	\$ 50,520.00	\$ 107.00	\$ 64,200.00
815-E001	GEOTEXTILE UNDER RIPRAP	SY	950	\$ 4.50	\$ 4,275.00	\$ 4.82	\$ 4,579.00	\$ 3.00	\$ 2,850.00
604-A001	CASTINGS	LBS	5,500	\$ 7.00	\$ 38,500.00	\$ 3.38	\$ 18,590.00	\$ 4.50	\$ 24,750.00
604-B001	GRATINGS	LBS	4,000	\$ 7.00	\$ 28,000.00	\$ 4.02	\$ 16,080.00	\$ 4.50	\$ 18,000.00
609-B002	CONCRETE CURB, HEADER (6"x18")	LF	727	\$ 35.00	\$ 25,445.00	\$ 20.40	\$ 14,830.80	\$ 21.81	\$ 15,855.87
609-D002	COMBINATION CONCRETE CURB AND GUTTER, TYPE 1 MODIFIED	LF	4,108	\$ 30.00	\$ 123,240.00	\$ 20.40	\$ 83,803.20	\$ 21.81	\$ 89,595.48
609-D004	COMBINATION CONCRETE CURB AND GUTTER, TYPE 2 MODIFIED	LF	446	\$ 30.00	\$ 13,380.00	\$ 20.40	\$ 9,098.40	\$ 21.81	\$ 9,727.26
608-A001	CONCRETE SIDEWALK, 4" THICK	SY	2,990	\$ 70.00	\$ 209,300.00	\$ 78.00	\$ 233,220.00	\$ 80.05	\$ 239,349.50
608-A001	CONCRETE SIDEWALK, 6" THICK	SY	522	\$ 90.00	\$ 46,980.00	\$ 90.00	\$ 46,980.00	\$ 92.00	\$ 48,024.00
608-C001	DETECTABLE WARNINGS, PER PLANS	SF	103	\$ 40.00	\$ 4,120.00	\$ 44.00	\$ 4,532.00	\$ 95.50	\$ 9,836.50



626-G001	THERMOPLASTIC DETAIL STRIPE, BLUE-ADA	LF	111	\$ 5.00	\$ 555.00	\$ 24.00	\$ 2,664.00	\$ 24.00	\$ 2,664.00
626-G002	THERMOPLASTIC DETAIL STRIPE, WHITE	LF	813	\$ 5.00	\$ 4,065.00	\$ 6.00	\$ 4,878.00	\$ 6.00	\$ 4,878.00
907-626-H001	THERMOPLASTIC LEGEND, BLUE-ADA HANDICAP SYMBOL	EA	2	\$ 500.00	\$ 1,000.00	\$ 600.00	\$ 1,200.00	\$ 6.00	\$ 12.00
626-H004	THERMOPLASTIC LEGEND, WHITE	SF	696	\$ 8.00	\$ 5,568.00	\$ 14.40	\$ 10,022.40	\$ 14.50	\$ 10,092.00
630-A001	STANDARD ROADSIDE SIGNS, SHEET ALUMINUM, 0.080 THICKNESS	SF	36	\$ 60.00	\$ 2,160.00	\$ 19.24	\$ 692.64	\$ 30.00	\$ 1,080.00
L00009	DECORATIVE SIGN POST, PER PLANS	LF	60	\$ 175.00	\$ 10,500.00	\$ 500.00	\$ 30,000.00	\$ 21.50	\$ 1,290.00
620-A001	MOBILIZATION	LS	1	\$ 150,000.00	\$ 150,000.00	\$ 20,200.00	\$ 20,200.00	\$ 82,150.00	\$ 82,150.00
1	REMOVE, RELOCATE, OR PROTECT ELECTRICAL/COMMUNICATION UTILITIES	LS	1	\$ 61,250.00	\$ 61,250.00	\$ 75,000.00	\$ 75,000.00	\$ 23,500.00	\$ 23,500.00
2	MAINTENANCE OF TRAFFIC	LS	1	\$ 50,000.00	\$ 50,000.00	\$ 12,000.00	\$ 12,000.00	\$ 10,000.00	\$ 10,000.00
3	8" PVC GRAVITY SEWER PIPE	LF	1,450	\$ 100.00	\$ 145,000.00	\$ 36.02	\$ 52,229.00	\$ 69.00	\$ 100,050.00
4	PRECAST MANHOLE, 4' DIAMETER (ALL DEPTHS)	EA	9	\$ 3,200.00	\$ 28,800.00	\$ 3,867.20	\$ 34,804.80	\$ 3,650.00	\$ 32,850.00
5	8" PVC WATER MAIN	LF	1,060	\$ 45.00	\$ 47,700.00	\$ 43.98	\$ 46,618.80	\$ 43.00	\$ 45,580.00
6	12" PVC WATER MAIN	LF	420	\$ 75.00	\$ 31,500.00	\$ 75.79	\$ 31,831.80	\$ 73.00	\$ 30,660.00
7	ADJUSTMENT OF EXISTING FORCE MAIN, STA 3+73	LS	1	\$ 4,500.00	\$ 4,500.00	\$ 5,584.00	\$ 5,584.00	\$ 8,075.75	\$ 8,075.75
8	FIRE HYDRANT ASSEMBLY	EA	4	\$ 5,000.00	\$ 20,000.00	\$ 7,627.60	\$ 30,510.40	\$ 5,890.00	\$ 23,560.00
9	RECONNECT AND RELOCATE EXISTING FIRE HYDRANT	EA	2	\$ 1,200.00	\$ 2,400.00	\$ 3,339.68	\$ 6,679.36	\$ 3,402.50	\$ 6,805.00
10	SANITARY SEWER/WATER MAIN CROSSING	EA	1	\$ 2,500.00	\$ 2,500.00	\$ 3,384.00	\$ 3,384.00	\$ 3,640.25	\$ 3,640.25
11	8" GATE VALVE	EA	2	\$ 2,000.00	\$ 4,000.00	\$ 2,858.96	\$ 5,717.92	\$ 2,430.00	\$ 4,860.00
12	12" GATE VALVE	EA	1	\$ 4,000.00	\$ 4,000.00	\$ 4,992.56	\$ 4,992.56	\$ 4,142.50	\$ 4,142.50
13	8" INSERTION VALVE	EA	2	\$ 3,500.00	\$ 7,000.00	\$ 12,000.00	\$ 24,000.00	\$ 11,800.00	\$ 23,600.00
14	12" INSERTION VALVE	EA	2	\$ 4,200.00	\$ 8,400.00	\$ 24,200.00	\$ 48,400.00	\$ 20,900.00	\$ 41,800.00
15	REMOVAL OF WATER MAIN (ALL SIZES)	LF	340	\$ 40.00	\$ 13,600.00	\$ 10.00	\$ 3,400.00	\$ 10.50	\$ 3,570.00
16	SINGLE SEWER SERVICE	EA	7	\$ 1,500.00	\$ 10,500.00	\$ 1,254.06	\$ 8,778.42	\$ 2,080.00	\$ 14,560.00
17	DOUBLE SEWER SERVICE	EA	6	\$ 2,250.00	\$ 13,500.00	\$ 1,624.74	\$ 9,748.44	\$ 2,693.00	\$ 16,158.00
18	SINGLE WATER SERVICE	EA	9	\$ 1,500.00	\$ 13,500.00	\$ 1,161.73	\$ 10,455.57	\$ 1,138.00	\$ 10,242.00
19	DOUBLE WATER SERVICE	EA	6	\$ 2,250.00	\$ 13,500.00	\$ 2,455.00	\$ 14,730.00	\$ 1,457.01	\$ 8,742.06
20	12"x8" TAPPING VALVE, CONNECT TO EXISTING WATER MAIN	EA	2	\$ 10,000.00	\$ 20,000.00	\$ 6,821.28	\$ 13,642.56	\$ 6,058.28	\$ 12,116.56
21	8"x8" TAPPING VALVE, CONNECT TO EXISTING WATER MAIN	EA	1	\$ 80,000.00	\$ 80,000.00	\$ 5,899.68	\$ 5,899.68	\$ 5,743.08	\$ 5,743.08
22	12"x6" TAPPING VALVE, CONNECT TO EXISTING WATER MAIN	EA	1	\$ 10,000.00	\$ 10,000.00	\$ 16,635.78	\$ 16,635.78	\$ 4,955.50	\$ 4,955.50
23	DUCTILE IRON FITTINGS	TON	6	\$ 22,000.00	\$ 132,000.00	\$ 43,399.60	\$ 260,397.60	\$ 21,475.65	\$ 128,853.90
24	IRRIGATION	LS	1	\$ 75,000.00	\$ 75,000.00	\$ 132,000.00	\$ 132,000.00	\$ 149,500.00	\$ 149,500.00
26 01 00-A	1-1/4" HDPE "ROLL PIPE" CONDUIT	LF	1,800	\$ 10.52	\$ 18,940.50	\$ 19.18	\$ 34,524.00	\$ 4.11	\$ 7,398.00
26 01 00-B	2" PVC CONDUIT	LF	5,400	\$ 13.80	\$ 74,520.00	\$ 22.14	\$ 119,556.00	\$ 6.58	\$ 35,532.00
Total of All Unit Price Bid Items					\$ 2,767,837.50		\$ 2,934,009.39		\$ 2,836,643.67

Alternate 1				Engineer Estimate		Bottom to Top LLC CoR #23104-MC		Moran Hauling Inc. CoR #09083-MC	
Item No.	Description	Unit	Estimated Quantity	Unit Price	Amount	Bid Unit Price	Bid Amount	Bid Unit Price	Bid Amount
601-B001	CLASS "B" STRUCTURAL CONCRETE, MINOR STRUCTURES	CY	180	\$ 900.00	\$ 162,000.00	\$ 1,200.00	\$ 216,000.00	\$ 1,480.00	\$ 266,400.00
602-A001	REINFORCING STEEL	LBS	15,206	\$ 3.00	\$ 45,618.00	\$ 3.00	\$ 45,618.00	\$ 3.00	\$ 45,618.00
Total of Alternate 1					\$ 207,618.00		\$ 261,618.00		\$ 312,018.00

Alternate 2				Engineer Estimate		Bottom to Top LLC CoR #23104-MC		Moran Hauling Inc. CoR #09083-MC	
Item No.	Description	Unit	Estimated Quantity	Unit Price	Amount	Bid Unit Price	Bid Amount	Bid Unit Price	Bid Amount
27	PRECAST CONCRETE DRAINAGE STRUCTURES	EA	82	\$ 2,500.00	\$ 205,000.00	\$ 2,368.00	\$ 194,176.00	\$ 3,500.00	\$ 287,000.00
Total of Alternate 2					\$ 205,000.00		\$ 194,176.00		\$ 287,000.00

Alternate 3				Engineer Estimate		Bottom to Top LLC CoR #23104-MC		Moran Hauling Inc. CoR #09083-MC	
Item No.	Description	Unit	Estimated Quantity	Unit Price	Amount	Bid Unit Price	Bid Amount	Bid Unit Price	Bid Amount
L00091	STONE PAVERS, PER PLANS	SF	14,869	\$ 8.00	\$ 118,952.00	\$ 22.20	\$ 330,091.80	\$ 43.00	\$ 639,367.00
Total of Alternate 3					\$ 118,952.00		\$ 330,091.80		\$ 639,367.00

Alternate 4				Engineer Estimate		Bottom to Top LLC CoR #23104-MC		Moran Hauling Inc. CoR #09083-MC	
Item No.	Description	Unit	Estimated Quantity	Unit Price	Amount	Bid Unit Price	Bid Amount	Bid Unit Price	Bid Amount
L00060	TREE GRATE (ARGO 3'x3' HEEL-PROOF)	EA	30	\$ 300.00	\$ 9,000.00	\$ 1,411.20	\$ 42,336.00	\$ 2,350.00	\$ 70,500.00
25	CEDAR ELM TREE	EA	77	\$ 300.00	\$ 23,100.00	\$ 2,340.00	\$ 180,180.00	\$ 1,700.00	\$ 130,900.00
Total of Alternate 4					\$ 32,100.00		\$ 222,516.00		\$ 201,400.00

Alternate 5				Engineer Estimate		Bottom to Top LLC CoR #23104-MC		Moran Hauling Inc. CoR #09083-MC	
Item No.	Description	Unit	Estimated Quantity	Unit Price	Amount	Bid Unit Price	Bid Amount	Bid Unit Price	Bid Amount
26 01 00-C	LIGHTING STANDARDS	EA	42	\$ 14,444.00	\$ 606,648.00	\$ 9,480.62	\$ 398,186.04	\$ 9,600.00	\$ 403,200.00
26 01 00-D	ELECTRICAL DISTRIBUTION	LF	9,200	\$ 10.95	\$ 100,740.00	\$ 9.47	\$ 87,124.00	\$ 9.50	\$ 87,400.00
26 01 00-E	ELECTRICAL SERVICE, PANEL, METER, RACK	LS	1	\$ 17,940.00	\$ 17,940.00	\$ 7,084.08	\$ 7,084.08	\$ 7,050.00	\$ 7,050.00
Total of Alternate 5					\$ 725,328.00		\$ 492,394.12		\$ 497,650.00

Total of Bids to be Awarded				Engineer Estimate		Bottom to Top LLC CoR #23104-MC		Moran Hauling Inc. CoR #09083-MC	
Total of Base Bid					\$ 2,767,837.50		\$ 2,934,009.39		\$ 2,836,643.67
Total of Alternate 2					\$ 205,000.00		\$ 194,176.00		\$ 287,000.00
Total of Alternate 3					\$ 118,952.00		\$ 330,091.80		\$ 639,367.00
Total of Alternate 4					\$ 32,100.00		\$ 222,516.00		\$ 201,400.00
Total of Alternate 5					\$ 725,328.00		\$ 492,394.12		\$ 497,650.00
Bid Total					\$ 3,849,217.50		\$ 4,173,187.31		\$ 4,462,060.67

I certify that this is a correct tabulation of all bids received for this Project on the date stated above to the best of my knowledge and belief.

*Andrew N. Levens*

Andrew Levens, P.E. - Engineering Manager



**Addendum :**

Lessor ( POA) is the rightful owner of ( 2 ) Trailer Units – a Rest Room Trailer and a Concessions Trailer both of which had been utilized in the past by various entities at Noma Ballfield . The Lessor (POA) is prepared to make the 2 trailer units available to the Lessee (City of Diamondhead) , the trailers are to be re- positioned at Noma Ballfield.

It is understood and agreed to by both the POA and the City that the trailers will be provided to the City in an “AS IS” condition . Any upgrade and/or expenditure item with the intent to enhance the trailers will be subject to the approval of the POA , once approved the cost of the improvement will be the City’s expense. Photographs of the /trailers interior and exterior along with and an Inventory List of any equipment items or products within the Trailers are to be recorded and signed by both parties.

Utility hook-ups and reoccurring utility expenses will be the City’s expense . Any and All maintenance and housekeeping practices will be the sole responsibility of the City . At such time that the Trailers are returned to the POA , their condition is to be indicative of being used responsibly and with routine maintenance practices applied.

The initial term of the TRAILER UNITS being made available will be from August 1, 2023 thru December 31, 2023 . It is acknowledged that the Addendum to the Lease Agreement will renew on an Annual Basis , with January 1<sup>st</sup> ,being the renewal date. Should either the POA or the City wish to terminate this portion of the Agreement , ie , the Addendum , a written Notice is to be submitted to the other party not less than ( 30 ) days in advance.

LESSOR:

LESSEE:

\_\_\_\_\_  
Diamondhead Country Club  
Property Owners Association Inc.

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

By:  
Title:

By: Jon McCraw  
Title : City Manager

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**COMMERCIAL LEASE AGREEMENT**

THIS AGREEMENT made, entered into and executed this the \_\_\_\_ day of \_\_\_\_\_, 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 \_\_\_\_\_.
2. The term of this lease shall be for a primary term of ten (10) years, commencing on \_\_\_\_\_, 2023, and expiring at midnight on \_\_\_\_\_, 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:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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:

LESSEE:

Diamondhead Country Club & Property Owners  
Association Inc.

City of Diamondhead, Mississippi

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

By: Jon McCraw  
Title: City Manager

-----

**See Attached  
ADDENDUM**



# City of Diamondhead

5000 Diamondhead Circle, Diamondhead, MS 39525

Phone: (228) 222.4626

FAX: (228) 222-4390

www.diamondhead.ms.gov

## STAFF REPORT TO PLANNING COMMISSION

DATE: July 25, 2023

CASE FILE NUMBER: 202300282

APPLICANT: Teresa and Brian Leatherman

TAX PARCEL NUMBER: 067M-2-35-007.000

PHYSICAL STREET ADDRESS: 7518 Augusta Way

ZONING DISTRICT: R-1 Low-Density Single-Family Home

TYPE OF APPLICATION: Variance

NATURE OF REQUEST: Teresa and Brian Leatherman, represented by Amber Thomas of Alant Construction, have filed an application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a covered patio (36.26' x 11.4') within 17.9' of the rear property line. The property address is 7518 Augusta Way. The tax parcel number is 067M-2-35-007.000. The property is in an R-1 zoning district. The rear yard setback is 20'. The variance requested for the covered patio is 2.1'. The Case File Number is 202300282.

DATE OF PUBLIC HEARING BEFORE PLANNING COMMISSION: July 25, 2023

ACTION BY THE PLANNING COMMISSION:

FINDINGS: The Planning Commission may recommend granting a variance provided affirmative findings of fact are made on each of the following criteria:

- A. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district. By way of example, special conditions or circumstances peculiar to land could include irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions.
- B. That literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this title.
- C. That special conditions and circumstances do not result from the actions of the applicant.
- D. That granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures, or buildings in the same zoning district.
- E. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification of the regulation in issue.
- F. The Variance would observe the spirit of the Ordinance and would not change the





Commissioner Item No. 10.  
 Commissioner Brewer  
 Commissioner Debrow  
 Commissioner Flowers  
 Commissioner Harwood  
 Commissioner Layel  
 Commissioner Nicaud

## AGENDA PLANNING AND ZONING COMMISSION

Tuesday, July 25, 2023  
 6:00 PM CST  
 Council Chambers, City Hall  
 and via teleconference, if necessary

**Call to Order**

**Statement of Purpose**

1. May our decisions today be made with wisdom, careful deliberation and in the best interest of the City of Diamondhead. May we display patience and kindness in our dealings with each other and all who are in attendance and may any decisions made today promote the health, safety and welfare of the citizens of Diamondhead and the enhancement of the City as a whole.

**Pledge of Allegiance**

**Roll Call**

**Confirmation or Adjustments to Agenda**

**Approval of Minutes**

2. Approval of June 27, 2023 minutes.

**New Business**

*Passed  
5-0*

3. Bob Barber with Orion Planning to provide an update on the Zoning Code re-write.
4. Teresa and Brian Leatherman, represented by Amber Thomas of Alant Construction, have filed an application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a covered patio (36.26' x 11.4') within 17.9' of the rear property line. The property address is 7518 Augusta Way. The tax parcel number is 067M-2-35-007.000. The property is in an R-1 zoning district. The rear yard setback is 20'. The variance requested for the covered patio is 2.1'. The Case File Number is 202300282.
5. The City of Diamondhead, is proposing a Text Amendment to the Tree Ordinance Article 11. – General Requirements and Restrictions. The proposed text amendment is to increase the preservation of existing trees. The Case File Number is 202300337.
6. The City of Diamondhead will hold a public hearing on a proposed Text Amendment to the Sign Ordinance Article 10.4.10 – Window Signs. The proposed text amendment is to remove “A permanent window sign shall be classified as a wall sign.” Article 10.5.2 On-Premises Attached Signs c; Place a black square in the table in zoning districts C-1, C-2, PFR, T, and I [The black square means a sign permit is required]. Article 10.6 Dimensional Requirements, Number of Signs and Special Conditions; Sign Type #8 Window Signs; Area; “Change 50% to 25% of window area.” Article 10.7 - Exempt Signs, delete “10.c Windows.”, Article 10.10.1 Non-Conforming Existing Signs; Insert “All window signs which are not in conformance with the Ordinance shall be unlawful one (1) year after the passage of the window sign text amendment.” The Case File Number is 202300332.

- 10. **2021-406:** Motion to accept bids received East Aloha Drive Phase 1 Improvements (MDA/SMLP Grant) and award same to Moran Hauling, Inc., the low base bid in the amount of \$396,923.49 and Alternate Bid in the amount of \$23,138.00 for a total project cost \$420,061.49.
- 11. **2021-410:** Motion to approve Mayor Depreo and City Manager Reso to serve as members of the Hancock County Library Strategic Planning Committee.

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

**MOTION CARRIED UNANIMOUSLY**

**Action Agenda.**

- 12. **2021-407:** Motion to concur with the Planning Commission recommendation to approve Janet Harmon-Curvey and John A. Curvey's application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a covered patio (36.26' x 11.4') within 17.9' of the rear property line. Additionally, to construct a masonry fireplace (3'x6') within 14.9' of the rear property line. The property address is 7518 Augusta Way. The tax parcel number is 067M2-35-007.000. The property is in an R-1 zoning district. The rear yard setback is 20'. The variance requested for the covered patio is 2.1' and the fireplace is 5.1'. The Case File Number is 202100459.

Motion made by Ward 1 Finley, Seconded by Councilmember-At-Large Maher to concur with the Planning Commission recommendation to approve Janet Harmon-Curvey and John A. Curvey's application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a covered patio (36.26' x 11.4') within 17.9' of the rear property line. Additionally, to construct a masonry fireplace (3'x6') within 14.9' of the rear property line. The property address is 7518 Augusta Way. The tax parcel number is 067M2-35-007.000. The property is in an R-1 zoning district. The rear yard setback is 20'. The variance requested for the covered patio is 2.1' and the fireplace is 5.1'. The Case File Number is 202100459.

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

**MOTION CARRIED UNANIMOUSLY**

- 13. **2021-411:** Motion to authorize the Planning & Zoning Commission to hold workshop(s) in conjunction with Orion Planning Group to develop parking regulations for the 7-mile Diamondhead Drive circle.

Motion made by Councilmember Finley, Seconded by Councilmember-At-Large Maher to authorize the Planning & Zoning Commission to hold workshop(s) in conjunction with Orion Planning Group to develop parking regulations for the 7-mile Diamondhead Drive circle.

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

**MOTION CARRIED UNANIMOUSLY**



5000 Diamondhead Circle  
Diamondhead, MS 39525  
Ph: 228-222-4626  
FX: 228-222-4390

APPLICATION FOR VARIANCE REQUEST

Case Number: 202300282

Date 6/8/23

Applicant: Amber Thomas ALANT Construction

Applicant's Address: 45 Hardy Court Shopping Center #207 Gulfport MS 39507

Applicant's Email Address: amber.alant@gmail.com

Applicant's Contact Number: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_ (Cell) 228-243-2031

Property Owner: Teresa Leatherman, Brian Leatherman

Owner's Mailing Address: 7518 Augusta Way Diamondhead MS 39525

Owner's Email Address tmosko81@aol.com

Owner's Contact Number: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_ (Cell) 901-277-3160

Tax Roll Parcel Number: 067M-2-35-007.000

Physical Street Address: 7518 Augusta Way Diamondhead MS 39525

Legal Description of Property: 61en EAGLE PHASE 1 LOT 107

Zoning District: R-1

State Purpose of Variance: (Front/Side/Rear/Lot Size/Parking/Building/Coverage)  
(Signage-Size-Height)

To build a covered patio with 17.9' of the rear property line.

**REQUIRED ITEM A**

Property Owner Teresa Leatherman & Brian Leatherman  
Street Address 1518 Augusta Way Diamondhead MS 39525  
Statement Describing Variance Request \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**The reasons why it complies with the criteria for variances:**

1. DO THE SPECIAL CONDITIONS AND/OR CIRCUMSTANCES EXIST WHICH AFFECT ONLY THE LAND OR STRUCTURE IN QUESTION AND NO OTHER SURROUNDING OR SIMILAR PROPERTIES?

Response: Unaware if other homes built in the same timeframe (2003) are affected by the current 20' rear setback or not.

2. WOULD LITERAL INTERPRETATION OF THE ZONING ORDINANCE DEPRIVE THE OWNER/APPLIANT OF RIGHTS COMMONLY ENJOYED BY OTHER PROPERTIES IN THE SAME ZONING DISTRICT?

Response: Many nearby neighbors enjoy screened patios. If the homeowners' variance is denied, it will affect the aesthetic of the rear view of the home because the new const. will not match up to the furthest rear footprint of the home.

3. ARE THE SPECIAL CONDITIONS OR CIRCUMSTANCES NOT CAUSED BY THE OWNER/APPLICANT?

Response: Special conditions/circumstances are not caused by owners/applicants.

4. WOULD THE REQUESTED VARIANCE NOT GIVE THE OWNER/APPLICANT ANY SPECIAL PRIVILEGES OR RIGHTS NOT SHARED BY OWNERS OF SIMILAR PROPERTIES?

Response: The requested variance ~~will~~ would not give the homeowners any special privileges or rights. Many of the neighbors in the area already enjoy screened outdoor areas attached to their homes. Without a variance the homeowners cannot construct the screened outdoor patio area to not match their current setback footprint of 17' 9" from property line.

### STATEMENT OF UNDERSTANDING

As the applicant or owner/s for the requested Variance in the City of Diamondhead, I (we) understand the following:

The application fee of \$100.00 must be paid prior to the acceptance of the application. Further, that if the application is withdrawn for any reason that the application fee is forfeited to the City of Diamondhead.

As the applicant or owner/s, I (we), or the designed representative, must be present at the public hearing.

That all information provided with this application is true and correct to the best of my knowledge.

That this application represents only property owned by me (us) and that any other adjoining property owners must apply for a Variance on his own behalf.

That all required attachments have been provided to the City of Diamondhead.

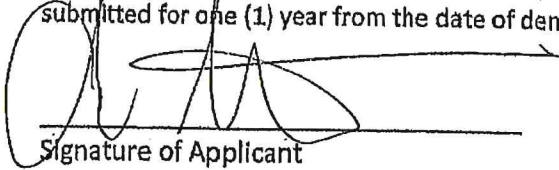
That additional information may be required by the Planning Commission prior to final disposition.

The City Council will not accept new case evidence once the recommendation has been made by the Planning Commission. If new evidence needs to be presented, the applicant will need to request that the matter be referred back to the Planning Commission for review.

The Public Hearing will be held on July 25, 2023 at 6 p.m. in the Council Chambers of the Diamondhead City Hall.

If a continuance of the hearing is necessary at my (our) request, the request must be made to the Zoning Official a minimum of seven (7) days prior to the hearing. If such request is not made in writing, I understand that a new application must be filed and an application fee paid to the City.

If the application is denied by the City Council, a new application for the subject property may not be submitted for one (1) year from the date of denial.

  
Signature of Applicant

Authentisign  
Teresa Leatherman  
6/9/2023 4:25:09 PM GMT  
Signature of Property Owner

\_\_\_\_\_ For Official Use Only \_\_\_\_\_

- \$100.00
- Copy of Deed, Lease or Contract
- Site Plan
- Parking Spaces
- List of Property Owner

- Application Signed
- Written Project Description
- Drainage Plan NA
- Notarized Statement NA



DIAMONDHEAD COUNTRY CLUB & POA INC

571.01'

125.0'

100.0'

108

8

7

HARMON-CURVEY JANET ETAL

107

125.0'

100.0'

46.2'

71.21'

AUGUSTA WAY

HARRIS-R

0 15 30ft

100.0'

Item No. 10.

**067M-2-35-007.000**

Parcel Number: 067M-2-35-007.000  
 Owner Name: LEATHERMAN BRIAN ETAL  
 Owner Address: 7518 AUGUSTA WAY  
 Owner City, State ZIP: DIAMONDHEAD, MS 39525  
 Physical Address: 7518 AUGUSTA WAY

Improvement Type: RES  
 Year Built: 2003  
 Base Area: 2794  
 Adjusted Area: 3282  
 Actual Total Value: 360611  
 Taxable Total Value: 0  
 Estimated Tax: 4397.83  
 Homestead Exemption: Yes  
 Deed Book: 2022  
 Deed Page: 9647  
 Legal Description 1: LOT 107 GLEN EAGLE PHASE 1  
 Legal Description 2:

Close Export Print Labels

**NOTICE OF PUBLIC HEARING  
PLANNING AND ZONING COMMISSION  
DIAMONDHEAD, MS**

Teresa and Brian Leatherman, represented by Amber Thomas of Alant Construction, have filed an application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a covered patio (36.26' x 11.4') within 17.9' of the rear property line.

The property address is 7518 Augusta Way. The tax parcel number is 067M-2-35-007.000. The property is in an R-1 zoning district. The rear yard setback is 20'. The variance requested for the covered patio is 2.1'. The Case File Number is 202300282.

In accordance with the Comprehensive Zoning Ordinance Article 2.6.4, the Planning Commission may recommend to the Mayor and City Council a variance be granted as the variance was applied for or in a modified form or subject to conditions or the application may be denied. A variance may be revocable, may be granted for a limited period, or may be granted subject to conditions as the Planning Commission or Mayor and City Council may prescribe.

The Planning and Zoning Commission will consider this application at its next regularly scheduled meeting on **Tuesday, July 25, 2023, at 6:00 p.m.** The public hearing will be held at Diamondhead City Hall in the Council Chambers at 5000 Diamondhead Circle in Diamondhead, MS 39525. Interested members of the public are invited to attend. This meeting will also be live streamed for your convenience.

If you have any questions or comments or would like to review the application, you may contact the Building Department at the above address and/or at 228-222-4626.



TO: Mayor, City Council and City Manager

FROM: J. Pat Rich, Development Coordinator *J. Pat Rich*

DATE: July 26, 2023

SUBJECT: Recommendation from Planning Commission Covered Patio Variance Request Teresa and Brian Leatherman 7518 Augusta Way

The residence was built in 2003 on the golf course with a portion of the residence 17.9' from the course property line. The ordinance requires 20' setback. The residents desire to build a covered patio that will run parallel to the portion that is 17.9' from the property line (attached plot plan). This variance was previously approved by the council on December 21, 2021, for the previous owner but expired after one year because it was never used.

At its regular meeting on July 25, 2023, the Planning Commission voted 5-0 to recommend approving the variance.

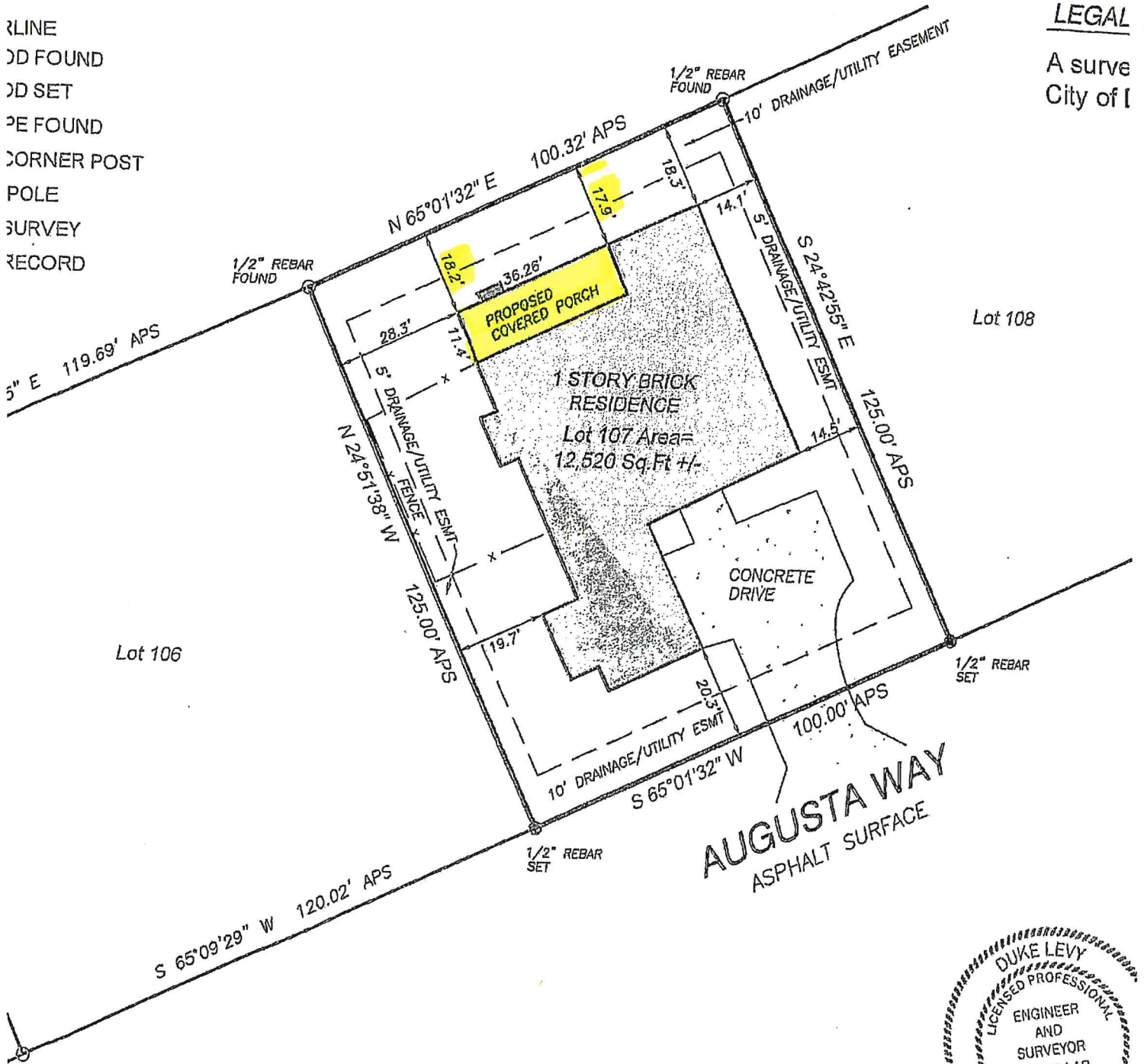


# PLOT PLAN

## LEGAL

A survey  
City of I

LINE  
FOUND  
SET  
FOUND  
CORNER POST  
POLE  
SURVEY  
RECORD



Lot 106

Lot 108

**AUGUSTA WAY**  
ASPHALT SURFACE



### REFERENCES:

- 1) DEED BOOK 2016 PAGE 14597
- 2) PLAT OF GLEN EAGLE S/D, PHASE 1

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City of Diamondhead, MS

# Docket of Claims Register -

Item No. 11.

APPKT02024 - 8.1.23 DOCKET

By Docket/Claim Number

Docket/Claim #	Vendor Name	Payable Date	Payable Number	Payable Description	Account Number	Account Name	Payment Amount Line Amount
DKT230917	AGJ	08/01/2023	106700 MSP-106454	MONTHLY IT SUBSCRIPTIONS	001-140-605.00	Professional Fees - IT	2,401.28
							36.00
							250.00
							2,019.78
							36.00
DKT230918	Amazon com LLC	08/01/2023	1Q4K-RWKK-YX6L	PADDLE PARADISE SUPPLIES	001-280-501.00	Office Supplies	729.57
							103.58
							119.98
							11.75
							201.80
DKT230919	B&J PITT STOP LLC	08/01/2023	11-0189822 11-0189857	OIL CHANGE	001-200-635.00	Professional Fees - R&M Outside Services	117.45
							45.00
							72.45
							475.00
							30.57
DKT230920	CADENCE EQUIPMENT FINANCE	08/01/2023	739499	COPIER LEASE AGREEMENT -- 22 OF 48	001-800-820.07	Note Principal Payment - Copier Lease Purch 2021	444.43
							001-800-830.07
DKT230921	Coast Electric Power Association	08/01/2023	7/18/23-026	MONTHLY ELECTRIC BILL	001-301-630.00	Utilities - Streetlights & Other	55.62
DKT230922	Covington Civil and Environmental LLC	08/01/2023	16422.08-18	CITY ENGINEER SERVICES	001-301-601.00	Professional Fees - Consulting	3,000.00
DKT230923	CSpire Cell Service	08/01/2023	JULY 2023	CELLULAR SERVICE FOR JULY	001-140-632.00	Telephone - Cell	977.09
							47.62
							343.30
							174.48
					001-200-612.00	Internet	411.69
					001-280-632.00	Telephone - Cell	
					001-301-632.00	Telephone - Cell	

Docket of Claims Register - Council

Docket/Claim #	Vendor Name	Payable Date	Payable Number	Payable Description	Account Number	Account Name	Line Amount	Payment Amount
DKT230924	CUSICK & WILLIAMS, PLLC	08/01/2023	1004	GENERAL MATTERS -- JULY	001-140-603.00	Professional Fees - Legal	10,812.50	17,718.75
			1005	PLANNING AND ZONING -- JULY	001-280-603.00	Professional Fees - Legal	2,437.50	
			1006	CITY PROSECUTOR -- JULY	001-110-603.00	Professional Fees - Legal	3,000.00	
			1007	LANGKOPP VS CODH -- JULY	001-280-603.00	Professional Fees - Legal	62.50	
			1008	MAKIKI BOND CLAIM - GENERAL MATTERS -- JULY	001-140-603.00	Professional Fees - Legal	1,406.25	
DKT230925	DAMIAN HOLCOMB	08/01/2023	7/25/2023	COURT APPOINTED ATTORNEY - ROBERT FOREMAN	650-110-110.00	Court Bond Holding	200.00	200.00
DKT230926	DIAMONDHEAD COUNTRY CLUB & POA	08/01/2023	AUGUST 2023	RENTAL OF MAINTENANCE YARD -- AUGUST	001-301-640.00	Rentals	1,000.00	1,000.00
DKT230927	Diamondhead True Value	08/01/2023	A438360	FIRE ANT KILLER	001-301-501.00	Supplies	25.99	257.03
			A438804	BAR & CHAIN OIL - CHAINSAWS	001-301-571.00	Repairs & Maintenance - Equipment	18.99	
			A439019	HILLMAN ITEMS	001-301-571.00	Repairs & Maintenance - Equipment	5.46	
			A439339	FA #74 HILLMAN ITEMS	001-301-571.00	Repairs & Maintenance - Equipment	2.22	
			A439415	PADLOCK, DRILL BIT, SCREW EXTRACTOR	001-301-571.00	Repairs & Maintenance - Equipment	10.99	
					001-301-501.00	Supplies	26.99	
					001-301-571.00	Repairs & Maintenance - Equipment	4.49	
			A439728	8801 TESTER	001-301-501.00	Supplies	13.80	
			A439783	60W LIGHT BULB	001-140-501.00	Supplies	3.99	
			A439792	BI-MTL BLADE	001-301-501.00	Supplies	15.19	
			A440391	ELEC TAPE, UTIL KNIFE, SK2 BLADE	001-301-501.00	Supplies	27.95	
			A440781	HYDRAULIC FLUID	001-301-571.00	Repairs & Maintenance - Equipment	58.99	
			A440902	EXHAUST FLUID	001-301-501.00	Supplies	41.98	
DKT230928	Diamondhead Water and Sewer District	08/01/2023	8/10/23-020	WATER	001-140-630.00	Utilities - General	144.51	
					001-140-630.00	Utilities - General	72.26	
			8/10/23-021		001-301-630.00	Utilities - Streetlights & Other	23.95	
			8/10/23-170		001-301-630.00	Utilities - Streetlights & Other	34.92	
			8/10/23-2070		001-301-630.00	Utilities - Streetlights & Other	23.95	
			8/10/23-2075		001-301-630.00	Utilities - Streetlights & Other	23.95	
			8/10/23-2080		001-301-630.00	Utilities - Streetlights & Other	23.95	
			8/10/23-830		001-301-630.00	Utilities - Streetlights & Other	23.95	

Docket of Claims Register - Council

Docket/Claim #	Vendor Name	Payable Date	Payable Number	Payable Description	Account Number	Account Name	Line Amount	Payment Amount
DKT230929	Diaz Brothers Printing	08/01/2023	6294	OPEN JAM SIGNS	001-140-650.00	Promotions	60.00	60.00
DKT230930	Enmon Enterprises	08/01/2023	MGC07230147	MONTHLY CONTRACT FOR JULY	001-140-633.00	Professional Fees -- Cleaning/Janitorial	2,799.00	2,799.00
DKT230931	Eric Nolan	08/01/2023	2022000354	TREE REMOVAL- 780 HILO WAY	001-280-681.00	Other Services & Charges	100.00	100.00
DKT230932	Fuelman	08/01/2023	NP64745280 NP64767203	FOR THE WEEK ENDING 7.16.23 FOR THE WEEK ENDING 7.23.23	001-200-525.00 001-200-525.00 001-280-525.00	Fuel Fuel Fuel	950.96 909.69 76.37	1,937.02
DKT230933	Kirks Tire Pros	08/01/2023	65066	UNIT 032 TIRES AND ALIGNMENT	001-200-635.00	Professional Fees - R&M Outside Services	679.35	679.35
DKT230934	Lowes Home Improvement	08/01/2023	961208-LKFZPI	ANCHORS AND DRILL - POLICE DEPT	001-200-501.00 001-200-505.00 001-200-501.00	Supplies FF&E Non-Capitalized Supplies	9.48 283.11 12.33	304.92
DKT230935	Marvin J Bobinger III	08/01/2023	JULY 2023	LOBBYING SERVICES FOR JULY	001-653-601.00	Professional Fees - Consulting	4,000.00	4,000.00
DKT230936	Napa of Bay St Louis	08/01/2023	354423 354425 354793 354883 354885 355029 355136 355186	V-BELT, 4-10 FA#449 ALTERNATOR FA#74 FORD TRACTOR HOSE FITTINGS UNIT #287 REPAIR PARTS HOSE FITTINGS, 6 & 8 MXTXREEL, ADAPTERS V- BELT V-BELT - FA #449	001-301-571.00 001-301-571.00 001-301-571.00 001-301-571.00 001-200-570.00 001-200-570.00 001-301-571.00 001-301-571.00 001-301-571.00	Repairs & Maintenance - Equipment Repairs & Maintenance - Equipment Repairs & Maintenance - Equipment Repairs & Maintenance - Equipment Repairs & Maintenance - Vehicle Repairs & Maintenance - Vehicle Repairs & Maintenance - Equipment Repairs & Maintenance - Equipment Repairs & Maintenance - Equipment	99.99 21.59 75.71 183.31 358.43 161.12 93.39 29.59 21.99	1,045.12
DKT230937	Petes Services	08/01/2023	702186	FILL SAND	001-301-583.00	Gravel, Sand, Rip Rap	320.00	320.00
DKT230938	Skidders AC Service & Repair Inc	08/01/2023	7/12/23	JUDGE'S CHAMBERS AC UNIT	001-140-635.00	Professional Fees - Repair & Maint Outside Serv	480.00	480.00
DKT230939	SLIDELL ARMY SURPLUS INC	08/01/2023	230727	BADGES AND BADGE HOLDER	001-200-535.00 001-200-535.00	Uniforms Uniforms	21.75 217.78	239.53

Docket of Claims Register - Council

APPKT02024 - Item No. 11.

Docket/Claim #	Vendor Name	Payable Date	Payable Number	Payable Description	Account Number	Account Name	Line Amount	Payment Amount
DKT230940	South MS Business Machines Gulfport	08/01/2023	333768 -58 441053	PAYMENT 58 OF 60 -- ADMIN PER COPY CHARGE FOR JULY	001-280-642.00 001-280-506.00	Rent - Copier Copier Usage/Maintenance	281.28 64.54	345.82
DKT230941	Southern Printing	08/01/2023	231958  232570  232768  232769	CODE ENFORCEMENT POLO SHIRTS  PUBLIC WORKS POLOS  POLICE UNIFORM POLOS	001-280-535.00 001-280-535.00 001-280-535.00 001-301-535.00 001-301-535.00 001-301-535.00 001-200-535.00 001-200-535.00 001-200-535.00 001-200-535.00 001-200-535.00 001-200-535.00	Uniforms Uniforms Uniforms Uniforms Uniforms Uniforms Uniforms Uniforms Uniforms Uniforms Uniforms	51.00 66.00 78.00 90.00 230.00 200.00 25.50 63.00 39.00 39.00 170.00 69.00	1,120.50
DKT230942	Timothy A Kellar Chancery Clerk	08/01/2023	8708	FEMA RECORDING FEES	001-140-694.00	Collection Fees	27.00	27.00
DKT230943	UMB Card Services	08/01/2023	17505/18146  454239  8NJ3C4H5YKKGDV	PICNIC TABLES AND UMBRELLAS  MONTHLY CHARGES FOR CONSTANT CONTACT CTC - CAR FRESHENER - 350 COUNT	001-653-650.00 001-140-650.00 001-140-623.00 001-000-066.00	Promotions Promotions Membership Dues/Fees Prepaid Other	1,259.82 347.70 52.00 325.95	1,985.47
DKT230944	UniFirst Corporation	08/01/2023	1530086316  1530087703	UNIFORM RENTAL FOR THE WEEK ENDING 7/17/23 UNIFORM RENTAL FOR THE WEEK ENDING 7.24.23	001-301-535.00 001-301-535.00	Uniforms Uniforms	144.34 144.34	288.68
DKT230945	Waste Management	08/01/2023	0809779-4768-0	DUMPSTER RENTAL	001-140-681.00	Other Services & Charges	68.83	68.83
DKT230946	WILLIAM RICHARDSON	08/01/2023	651	PORTICO REPAIRS	001-140-635.00	Professional Fees - Repair & Maint Outside Serv	9,745.00	9,745.00
<b>Total Claims: 30</b>							<b>Total Payment Amount:</b>	<b>52,849.47</b>