

**CITY OF CLINTON
REGULAR MEETING OF THE MAYOR AND BOARD OF ALDERMEN
TUESDAY, JULY 6, 2010 - 7:00 P.M.
MUNICIPAL COURTROOM – 305 MONROE STREET**

WELCOME AND CALL TO ORDER Mayor Rosemary Aultman

INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG

The invocation was led by Alderman Barnett followed by the pledge of allegiance to the flag led by Alderwoman Peace.

ROLL CALL City Clerk, Russell Wall

Present: Jehu Brabham – Alderman-at-Large
 Tony Hisaw – Alderman Ward 1
 Tony Greer – Alderman Ward 2
 William O Barnett – Alderman Ward 3
 Kathy Peace – Alderwoman Ward 4
 Mike Morgan – Alderman Ward 5
 Mike Cashion – Alderman Ward 6

APPROVAL OF CONSENT AGENDA ITEMS A – Q

MOTION made by Alderwoman Peace and **SECONDED** by Alderman Greer to approve the Consent Agenda Items A-Q. Item C will serve to advertise favorably the opportunities, possibilities and resources of the City of Clinton. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF A HOUSEHOLD HAZARDOUS WASTE COLLECTION EVENT GRANT

Upon presentation by Mike Parker, Director of Public Works, **MOTION** made by Alderman Cashion and **SECONDED** by Alderman Barnett the board approved the Household Hazardous Waste Collection Event Grant. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF SUPPLEMENTAL AGREEMENT NUMBER 1 AND NUMBER 2 FOR THE BRIDGE REPLACEMENT PROJECT

Upon presentation by Richard Broome, City Engineer, **MOTION** made by Alderman Brabham and **SECONDED** by Alderman Greer the board approved the Supplemental Agreement Number 1 and Number 2 for the Bridge Replacement Project. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH WILLIFORD, GEARHART & KNIGHT, INC FOR THE NRCS PROJECT

Upon presentation by Richard Broome, City Engineer, **MOTION** made by Alderman Cashion and **SECONDED** by Alderman Brabham the board approved the professional services agreement with Williford, Gearhart & Knight, Inc for the NRCS project. **MOTION CARRIED UNANIMOUSLY**

OTHER BUSINESS

AUTHORIZE JERRY BOUNDS AND BRIAN MEASELLS TO BE SWORN IN BY THE MUNICIPAL JUDGE TO WRITE CITATIONS ON COMPLIANCE ISSUES IN THE CITY OF CLINTON, MISSISSIPPI

Upon presentation by Rosemary Aultman, Mayor, **MOTION** made by Alderman Barnett and **SECONDED** by Alderman Brabham the board authorized Jerry Bounds and Brian Measells to be sworn in by the Municipal Judge to write citations on compliance issues in the City of Clinton, Mississippi. **MOTION CARRIED UNANIMOUSLY**

EXECUTIVE SESSION

MOTION made by Alderman Brabham and **SECONDED** by Alderman Hisaw that the Mayor and Board of Alderman consider entering into executive session to discuss a personnel matter. **MOTION CARRIED UNANIMOUSLY**

MOTION made by Alderman Brabham and **SECONDED** by Alderman Hisaw that the Mayor and Board of Aldermen enter into executive session to discuss a personnel matter. **MOTION CARRIED UNANIMOUSLY**

The Mayor and Board of Aldermen entered executive session at 7:23 p.m. Also present in the executive session were City Attorney Ken Dreher, Police Chief Don Byington and City Clerk Russell Wall. A discussion of a personnel matter occurred during the executive session. No action was taken during the executive session. **MOTION** was made by Alderman Brabham and **SECONDED** by Alderman Morgan to exit executive session. **MOTION CARRIED UNANIMOUSLY**. The Mayor and Board of Aldermen exited executive session at 7:45 p.m.

ADJOURN 7:46 P.M.

MOTION made by Alderman Brabham and **SECONDED** by Alderman Greer to adjourn until the next regular meeting of the Mayor and Board of Aldermen to be held on July 20, 2010 at 7:00 pm. **MOTION CARRIED UNANIMOUSLY**

APPROVED: Rosemary L. Aultman
Rosemary Aultman, Mayor

7-7-2010
Date

ATTEST: Russell L. Wall
Russell L. Wall, City Clerk

7-7-2010
Date





STATE OF MISSISSIPPI
HALEY BARBOUR
GOVERNOR
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
TRUDY D. FISHER, EXECUTIVE DIRECTOR

July 21, 2010

Mr. Mike Parker, Public Works Director
City of Clinton
P.O. Box 156
Clinton, MS 39060

Dear Mr. Parker:

Enclosed is your copy of the executed solid waste assistance grant agreement SWC340 between the Mississippi Department of Environmental Quality and the City of Clinton (City).

The City may request reimbursement for program expenditures by submitting the Request for Payment form attached to your grant agreement, and you may submit a payment request quarterly for approved program activities.

Your payment request should be mailed to:

Mississippi Department of Environmental Quality
ATTN: Invoices
P.O. Box 2369
Jackson, Mississippi 39225

The release of claims form (attached to your grant agreement) should be submitted with your final payment request. Please contact our office at (601) 961-5171 if you have questions or comments concerning your grant project.

Sincerely,

A handwritten signature in blue ink that reads "Denise Wilson".

Denise Wilson
Solid Waste Policy, Planning & Grants Branch

enclosures

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY ASSISTANCE AGREEMENT		Assistance ID No. SWC340	
		Date of Staff Approval 22-Jun-10	
AGREEMENT TYPE		Recipient Type	
Cooperative Agreement		CITY	
Grant Agreement	X	Tax ID No.	
Assistance Amendment			
RECIPIENT CITY OF CLINTON P.O. BOX 156 CLINTON, MS 39060		PROJECT MANAGER MIKE PARKER PUBLIC WORKS DIRECTOR	
ISSUING OFFICE MS DEPT. OF ENVIRONMENTAL QUALITY OFFICE OF POLLUTION CONTROL P. O. BOX 2261 JACKSON, MS 39225		PROJECT MANAGER DENISE WILSON SOLID WASTE POLICY, PLANNING AND GRANTS BRANCH	
ASSISTANCE PROGRAM LOCAL GOVERNMENT SOLID WASTE ASSISTANCE PROGRAM		STATUTORY AUTHORITY SECTION 17-17-65, MS CODE ANN.	
PROJECT TITLE AND DESCRIPTION HOUSEHOLD HAZARDOUS WASTE COLLECTION EVENT			
PROJECT LOCATION CITY CLINTON COUNTY HINDS STATE MS		PROJECT PERIOD The project period shall begin upon execution of the grant agreement by the Executive Director of MDEQ and end no later than JUNE 30, 2011.	
		TOTAL PROJECTED PERIOD COST \$ 25,000.00	
FUNDS	Former Award	This Action	Amended Total
MDEQ Amount This Action --Competitive (4050)		\$ 25,000.00	
Recipient Contribution		\$ 8,334.00	
Other Contribution			
Total Project Cost	\$ -	\$ 33,334.00	
APPROVED BUDGET			
Personnel-(Enforcement Officer)			
Indirect			
Travel			
Equipment			
Supplies			
Educational Material			
Contractual			
Construction			
Other --		\$ 25,000.00	
Total Charges	\$ -	\$ 25,000.00	
METHOD OF PAYMENT			
Advance			
Reimbursement	X		

SPECIAL TERMS AND CONDITIONS FOR ASSISTANCE AGREEMENT
(Local Governments Solid Waste Assistance Program)

Method of Payment

Reimbursement shall be the method of payment. The recipient shall submit Attachment A, Request for Payment, and additional documentation for verification of service/work performed prior to payment being issued. Request for Payment forms and supporting documentation shall be submitted to Mississippi Department of Environmental Quality (MDEQ) on a quarterly basis and include a report of activities to date, (i.e., unauthorized dump sites cleaned, etc.) The recipient shall submit a payment request for eligible program activities performed through June 30 of each year no later than July 31 of that year. All requests for payment related to this grant agreement shall be submitted to MDEQ no later than forty-five (45) days after the expiration date of the grant agreement after which time, the grant agreement will be considered closed and funds will no longer be available to the recipient. Funds utilized and/or disbursed under this grant award shall be consistent with the recipient's approved grant application, incorporated herein by reference. This clause shall supercede Clause 5, Method of Payment of the Standard Terms and Conditions.

Disposal of Wastes

Disposal of solid wastes from the clean-up of unauthorized dumps or from other collection activities funded by this grant shall be conducted in accordance with existing solid waste disposal laws and regulations. The preferred method of disposal shall be the removal of the wastes to a permitted/authorized solid waste landfill, or where appropriate, rubbish landfill. However, if conditions warrant, the recipient, upon concurrence from MDEQ, may elect to abate an unauthorized dump by on-site burial of such wastes as allowed by state law. On-site burial of wastes shall be considered by MDEQ on a case-by-case and shall be limited to nonhazardous wastes.

Grant Administration Costs

The recipient shall use not more than three percent (3%) of funds provided through this grant to defray the costs of administration of the grant.

Responsible Party

If a person is found to be responsible for creating an unauthorized dump, the recipient shall make a reasonable effort to require that person to clean up the property before expending any monies from this funding to clean up the property. If the recipient is unable to locate the person responsible for creating the dump, or if the recipient determines that person is financially or otherwise incapable of cleaning up the property, the recipient may use the monies from the fund to clean up the property and shall make a reasonable effort to recover from the responsible person any funds expended.

Enforcement Officer

Upon selection or designation of the enforcement officer the Recipient agrees to provide MDEQ with the following information:

1. Name, address, telephone number, fax number, and, where applicable, e-mail address for the enforcement officer;
2. Detailed description of the duties and responsibilities for the enforcement officer.

Should the enforcement officer be replaced due to resignation, or attrition, the recipient shall provide the information above upon selection of the replacement.

Recipient further agrees that the enforcement officer shall be required to investigate local complaint related matters, which may be directed to the enforcement officer by MDEQ.

Recipient further agrees to adhere to the Local Solid Waste Enforcement Officers Duties and Procedures guidance document prescribed by MDEQ.

Household Hazardous Waste Collection Project (HHW)

The Recipient shall conduct a HHW project in accordance with Sections 17-17-439 through 17-17-445 and the Mississippi "Right-Way to Throw Away Program."

The Recipient shall provide to MDEQ a comprehensive report following the HHW collection day event which would include, at a minimum, the following:

1. Description of the public notification efforts;
2. Amounts of waste collected, by type;
3. Cost summary;
4. Number of residents participating in the HHW collection day event.

The Recipient shall ensure that all hazardous materials collected shall be disposed by a contractor who is properly licensed and approved by all applicable regulatory agencies.

STANDARD TERMS AND CONDITIONS FOR ASSISTANCE AGREEMENTS

1. Workplan

The workplan (grant application) constitutes the Recipient's and MDEQ's commitment to accomplish the program goals and objectives. MDEQ's review and evaluation of performance under this agreement and MDEQ's response to the findings of oversight will be carried out in accordance with the stated policies.

2. Expenditure Commitment

The Recipient commits to expend the funds awarded in this agreement and to complete the funded project in accordance with the workplan included in this grant application (workplan) and incorporated into this agreement by reference.

3. Financial Management

MDEQ requires that Recipients have in place, prior to the receipt of funds, a financial management system that will be able to isolate and trace every grant dollar from receipt to expenditure and have on file appropriate support documentation for each transaction. Examples of documentation are vendor invoices, bills of lading, payment vouchers, payrolls, bank statements and reconciliations.

4. Audit: Access to Records

Recipient assures that it will give MDEQ, the Comptroller General of the United States, and the State of Mississippi, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives; and will retain all required records relating to this agreement for three years after project completion and all other pending matters are closed.

5. Method of Payment

Reimbursement shall be the preferred method of funding. Recipients shall be paid a predetermined sum for services/work performed. Recipient shall submit a Request for Payment, as provided in Attachment A, and additional documentation for verification of service/work performed prior to payment being issued. In special cases, funding advances may be allowed, subject to approval by MDEQ. Requests for Payment and applicable supporting documentation shall be submitted to MDEQ upon project completion. All requests for payments related to this grant shall be submitted to MDEQ no later than forty-five (45) days after the expiration date of the grant.

6. Final Payment

Pursuant to satisfactory completion of the work performed under this agreement as may be determined by final inspection, and as a condition before final payment under this agreement or as termination settlement under this agreement, the Recipient shall execute and deliver to MDEQ a release of all claims against MDEQ arising under, or by virtue of, this agreement, except claims which are specifically exempted by the Recipient to be set forth therein. Such release is provided in Attachment B of this agreement. Unless otherwise provided in this agreement, by state law, or expressly agreed to by the parties in this agreement, final payment under this agreement or settlement upon termination of this agreement shall not constitute waiver of MDEQ's claims against the Recipient or his sureties under this agreement or applicable performance and payment of bonds.

7. Procurement

Recipient shall comply with purchasing guidelines established in 31-7-13 of the Mississippi Code in the procurement of commodities and services.

8. Disadvantaged Businesses

Recipient will ensure that its best efforts will be used in making available to minority businesses a minimum of 5% of the grant funds that may be expended as necessary in obtaining any supplies, construction, equipment, or services in completing the project detailed in the Workplan.

9. Title to Real Property, Equipment and Supplies

Unless otherwise agreed to, title to any real property, equipment and supplies that may be acquired under this agreement shall vest upon acquisition in the Recipient. Real property, equipment and supplies shall be used by the Recipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds.

10. Changes and Amendments

Changes may be made to the agreement in relation to the effective period of the agreement, the total amount of the agreement, budgetary categories associated with the funding of the agreement, and the work to be performed as defined in the work plan. Such changes shall be constructively made by way of a formal agreement amendment, which shall require written approval of the Executive Director of MDEQ prior to any such changes being made. Changes which affect the total amount of the agreement may also require prior approval by the Commission on Environmental Quality.

11. Recycled Paper

Recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to MDEQ.

12. Gratuities

- A. If MDEQ finds, after a notice and hearing, that the Recipient or any of the Recipient's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any employee, official or agent of MDEQ, the state agency providing funds used in this agreement in an attempt to secure a agreement or favorable treatment in awarding, amending or making any determination related to the performance of this agreement, MDEQ may, by written notice to the Recipient, terminate this agreement. MDEQ may also pursue other rights and remedies that the law or this agreement provides. However, the existence of the facts on which MDEQ bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this agreement.
- B. In the event this agreement is terminated as provided in paragraph A., MDEQ may pursue the same remedies against the Recipient as it could pursue in the event of a breach of the agreement by the Recipient, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by MDEQ) which shall be not less than three nor more than ten times the costs the Recipient incurs in providing any such gratuities to such officer or employee.

13. Publication and Publicity

- A. Recipient may publish results of its participation pursuant to this agreement after prior review by and consent by MDEQ's Project Manager provided that (1) such publications acknowledge that the program is supported by funds granted by MDEQ, and (2) that one (1) copy of the publication is furnished to MDEQ.
- B. Recipient shall use its best efforts to ensure that any publicity received by the Recipient as a result of the work funded by this agreement shall acknowledge that the program is supported by funds granted by MDEQ.

14. Hold Harmless for Personnel Claims

To the extent permitted by Mississippi law, recipient agrees to indemnify, save and hold harmless the Mississippi Commission on Environmental Quality, MDEQ and the state of Mississippi, as well as their employees, from and against any and all losses, claims, debts, demands, damages, suits or actions at law, judgments, and costs, including attorney's fees, or expenses on the part of MDEQ or MDEQ's agents or employees arising out of or attributable

to work performed under this agreement or the use of facilities or equipment provided to Recipient under the terms of this agreement.

15. Assurances

The Recipient certifies that:

- A. It maintains the legal authority to apply for state assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-state share of project costs) to ensure proper planning, management and completion of the project described in the grant application.
- B. It is not presently debarred, suspended, proposed for debarment, declared ineligible from participating in government projects; has not within a three year period preceding this application 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 public transactions; has not within a three year period preceding this proposal been convicted of 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; is not presently indicted or otherwise criminally or civilly charged by a government entity with commission of any of the offenses enumerated herein; and has not within a three year period preceding this application had one or more public transactions terminated for default.
- C. It will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- D. It will comply with all applicable requirements or State and Federal laws, executive orders, regulations and policies governing this program.
- E. The Recipient shall maintain current permits and approvals necessary from applicable regulatory agencies to carry out the project/program activities.

16. Enforcement

- A. If a Recipient materially fails to comply with any term of an award, whether stated in Federal and State statute or regulation, an assurance, in a State plan or application, a notice of an award, or elsewhere, MDEQ may take one or more of the following actions, as appropriate in the circumstances:
 - 1. Temporarily withholding payments pending correction of the deficiency by the Recipient or more severe enforcement by MDEQ;

2. Disallow (that is deny both use of funds and matching credit for) all or part of the cost of the activity of action not in compliance;
 3. Wholly or partly suspend or terminate the current award for the Recipient's program.
 4. Withhold further awards for the program, or
 5. Take other remedies that may be legally available.
- B. In taking an enforcement action, MDEQ will provide the Recipient an opportunity for such hearing, appeal, or other administrative proceeding to which the Recipient is entitled under any statute or regulation applicable to the action involved.
- C. Costs of Recipient resulting from obligations incurred by the Recipient during a suspension or after termination of an award are not allowable unless MDEQ expressly authorizes them in the notice of suspension or termination or subsequently. Other Recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:
1. The costs result from obligations which were properly incurred by the Recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are non-cancelable, and
 2. The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

17. Termination for Convenience

This agreement may be terminated in whole or in part as follows:

- A. By MDEQ with the consent of the Recipient in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of a partial termination, the portion to be terminated; or
- B. By the Recipient upon written notification to MDEQ, setting forth the reasons for such termination, the effective date, and in the case of a partial termination, the portion to be terminated. However, if, in the case of a partial termination, MDEQ determines that the remaining portion of the award will not accomplish the purposes for which the award was made, MDEQ may terminate the award in its entirety under paragraph A. of this section.

18. Remedies

Unless otherwise provided in this agreement, all claims, counter-claims, disputes and other matters in question between MDEQ and the Recipient arising out of, or relating to, this agreement or the breach of it will be decided in a court of competent jurisdiction within the State of Mississippi. Before pleading to the Mississippi judicial system at any level, the Recipient must exhaust all administrative remedies in effect on the date the agreement giving rise to the dispute was executed.

The State of Mississippi, acting by and through the Mississippi Department of Environmental Quality, hereby offers assistance/amendment to **CITY OF CLINTON** for all approved costs incurred up to and not exceeding **\$25,000.00** for the support of approved budget period effort described in application (including all application modifications) cited in this agreement for the **HOUSEHOLD HAZARDOUS WASTE COLLECTION EVENT**.

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY


Trudy D. Fisher
Executive Director

7/16/10
Date

CITY OF CLINTON


Authorized Signature

7.7-2010
Date

ATTACHMENT B

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

RELEASE OF CLAIMS

Agreement Number **SWC340**

WHEREAS, by the terms of the above-identified agreement entered into by the Mississippi Department of Environmental Quality and the Recipient, **CITY OF CLINTON** it is provided that after completion of all work, and prior to final payment, the Recipient will furnish the Mississippi Department of Environmental Quality with a release of all claims;

NOW, THEREFORE, in consideration of the above premises and the payment by the Mississippi Department of Environmental Quality to the Recipient of the amount now due under the agreement, to wit, the sum of \$ _____, the Recipient hereby remises, releases, and forever discharges the Mississippi Department of Environmental Quality, its officers, agents, and employees, of and from all manner of debts, dues, liabilities, obligations, accounts, claims, and demands whatsoever, in law and equity, under or by virtue of the said agreement except:

CITY OF CLINTON

Authorized Signature

ATTACHMENT A

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
ATTN: INVOICES
P. O. BOX 2369
JACKSON, MS 39225

REQUEST FOR PAYMENT

Name of Recipient _____ Grant Agreement No. _____

Address _____ Person preparing report: _____

Telephone number: _____

Request period: From _____ To _____

1. Amount of this payment request: \$ _____

2. Total amount of grant: \$ _____

3. Total prior payments approved: \$ _____

4. Total funds requested to date (*line 1 plus line 3*): \$ _____

5. Balance of grant funds remaining after this request (*line 2 minus line 4*) \$ _____

TO BE COMPLETED ONLY IF RECIPIENT IS PROVIDING FUNDS TO THE GRANT PROJECT.

6. Total funds to be contributed by recipient: \$ _____

7. Amount contributed by recipient to date: \$ _____

8. Balance to be contributed by recipient (*line 6 minus line 7*): \$ _____

I hereby certify that the amount requested is for reimbursement of allowable costs consistent with the terms of this agreement, that request for reimbursement of these costs has not previously been made, and that the amounts requested herein do not exceed budgeted amounts stipulated in the award.

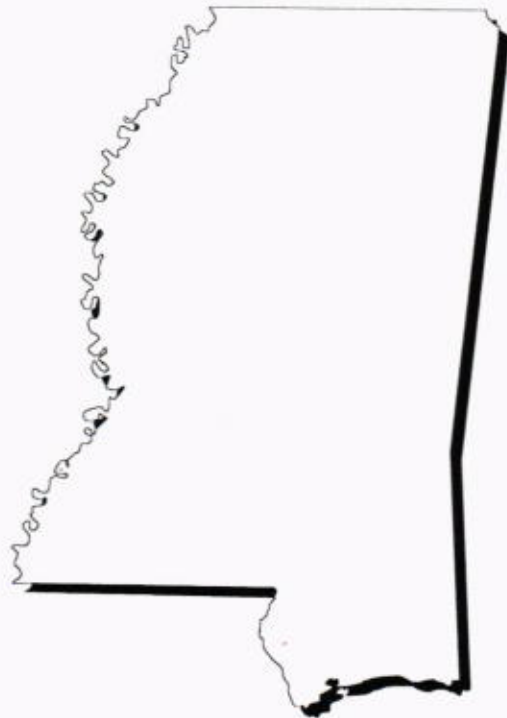
NOTE: Please attach appropriate documentation that supports this payment request (for example, payroll records for Enforcement officer, billing records, volume of tires disposed, volume of solid wastes disposed, location of solid waste sites cleaned up).

Signature of Authorized Official

Typed Name and Title of Authorized Official

Date

GRANT REGULATIONS FOR WASTE TIRE AND SOLID WASTE ASSISTANCE FUNDS



STATE OF MISSISSIPPI



**Mississippi Department of Environmental Quality
Office of Pollution Control
P. O. Box 2261
Jackson, Mississippi 39225-2261**

**Adopted May 28, 1992
Last Amended February 26, 2004**

**STATE OF MISSISSIPPI
GRANT REGULATIONS FOR WASTE TIRE
AND SOLID WASTE ASSISTANCE FUNDS**

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**STATE OF MISSISSIPPI
GRANT REGULATIONS FOR WASTE TIRE
AND SOLID WASTE ASSISTANCE FUNDS**

I. WASTE TIRE GRANT GUIDELINES

A. Eligibility and Allocation of Funds

1. Monies allocated to the Environmental Protection Trust Fund from waste tire fees shall be utilized for making grants as follows:
 - (a) To counties, municipalities, or regional solid waste management authorities (i). for providing a waste tire collection site(s) for small quantity waste tire generators, and (ii). for use in clean-up of small scattered unauthorized waste tire dumps, not abated under the Department's waste tire abatement program. These grants shall herein be known as "local community waste tire collection and clean-up grants";
 - (b) To persons that will manufacture products from waste tires, use recovered rubber from waste tires or use waste tires as a fuel or fuel supplement and for funding research and demonstration projects directly related to solving solid waste problems resulting from waste tires, herein known as "waste tire recycling/research grants".
 - (c) To counties, municipalities or regional solid waste authorities for purchase of products derived from Mississippi Waste Tires, herein known as tire-derived product grants.
 - (d) To counties, municipalities or regional solid waste authorities for providing funds for employment of a solid waste enforcement officer, herein known as solid waste enforcement officer grants.
2. For local community waste tire collection and clean-up grants:
 - (a) The Department of Environmental Quality (Department) may receive grant applications at any time. All applications received will be evaluated for consistency with these regulations, subject to the availability of funds.
 - (b) The entire cost of the local community waste tire collection and clean-up program may be eligible for grant award.
3. For waste tire recycling/research grants:
 - (a) The Department will receive grant applications semiannually. All applications received by April 1 and October 1 of each year will be evaluated for consistency with these regulations, subject to the availability of funds.
 - (b) 1. No more than 50% of the costs of the project are eligible to provide incentive grants to persons that will manufacture products from waste

Under these conditions, the local government applicant may apply for funds for the payment of up to 50% of the cost of employing the officer.

- (e) The cost of employing a solid waste enforcement officer shall be limited to salary and fringe benefits for purposes of these regulations.
- (f) Enforcement officers employed with support from these funds shall comply with the conditions and work duties prescribed by the Department for local solid waste enforcement officers.
- (g) Where possible, grants under this Section will be awarded either as part of a local community waste tire collection and clean-up grant, described in Sections I.A.1.a and I.A.2. or a part of a grant awarded for the cost of employing a solid waste enforcement officer, described in Section II.A.1.d and II.A.8.

6. Other Grant Guidelines

- (a) Generally, no grant shall be awarded under Sections I.A.3 and I.A.4 for any activity, which receives less than 75% of its waste tires from Mississippi waste tire sites, retailers or residents. However, the Commission may consider requests for funding from applicants who do not meet this requirement contingent upon the applicant demonstrating that the activity does or will accept Mississippi waste tires and that the award of the requested funding would be in the best interest of the State of Mississippi. The burden of proof shall be on the applicant to demonstrate that eligibility requirements have been met.
- (b) No grant shall be awarded for the purchase or lease of equipment or other property, unless it can be demonstrated that such equipment or property is integral to the successful achievement of the overall goals of Sections I.A.1(a), I.A.1.(b), or I.A.1.(c).
- (c) No grant shall be awarded to a local government under Sections I.A.3, I.A.4, and I.A.5, if it is determined that the local government has not developed an adequate local waste tire collection and clean-up program.
- (d) No grant shall be awarded if the grant is determined by the Department to be inconsistent with a local, solid waste management plan that has been submitted to and approved by the Commission.

B. Grant Application Procedures

- 1. In order to receive consideration for a grant award from the Commission on Environmental Quality, persons or entities shall submit to the Department an application package, including an original and two (2) copies of a grant application. The application package shall contain the following items:
 - (a) a completed grant application form, as provided by the Department;

6. The project proposes to process or manage a larger number of waste tires than other projects proposed.
7. The project proposes to employ higher numbers of persons than other projects proposed.
8. The proposal is vital to the continuation and/or completion of an on-going research project.
9. The project is proposed by a university, college, other academic group, or public agency.

(c) For tire-derived product grants:

1. The applicant has not been previously funded or has not received funds during the current state fiscal year.
2. The tire-derived product to be used is a newly developed product or has not previously been utilized in Mississippi.
3. The purchase of the tire-derived product will lead to the establishment or growth of efforts to manufacture the product in Mississippi.
4. The proposal is deemed to be creative and innovative and has a high potential for providing additional solutions to the problems of waste tire management.
5. The local government applicant has established an ongoing successful waste tire collection and clean-up program including an adequate number of collection sites and appropriate public outreach efforts.

(d) For solid waste enforcement officer grants:

1. The applicant has established an ongoing, successful, local solid waste enforcement program.
2. The applicant has adopted enforceable and appropriate local dumping ordinances or laws.
3. The applicant has demonstrated a long term commitment of funding support to the employment and work efforts of a local solid waste officer, rather than for just the proposed grant period.
4. The applicant proposes an enforcement program that will serve a wider geographic area and/or a larger population base than other projects.
5. The applicant has established an ongoing successful waste tire collection and clean-up program including an adequate number of collection sites and appropriate public outreach efforts.

D. Conditions of Grant Awards

1. Grants made to counties, municipalities or regional solid waste management authorities shall require compliance with all applicable procurement and purchasing regulations established pursuant to state law.
2. At the discretion of the Commission, monies which are unspent after the expiration date of the grant award shall be forfeited back into the waste tire account.
3. Grants made to any person or group which are awarded for less than 100% of the total estimated costs of the project shall ensure that the grantee's matching share is expended or committed in proportion to the release of state grant funds.
4. The Commission may include any other conditions as part of the grant award which it determines are necessary to reasonably manage the project and/or protect the environment.

E. Reallocation of Funds

The Commission, upon determination that unused grant funds are available in a particular category, may reallocate funds between the programs described in Section A.1.

retained in the fund for the succeeding fiscal year and included in that year's allocation.

4. Any county belonging to a regional solid waste management authority or other multi-county entity shall adopt a resolution to allow the regional authority or other multi-county entity to apply for and use the county's noncompetitive funds. In such a case, the county will not be eligible for the annual allocation until the next fiscal year, but remain eligible for the competitive funds.
5. No grantee shall use more than three percent (3%) of the funds provided to defray the costs of administration of the grant.
6. Funds provided through a grant award shall not be used to pay any costs of the establishment or operation of a landfill, rubbish disposal site or other type of solid waste disposal facility, for the routine collection of garbage or to collect any fees assessed under Section 19-5-21 or 21-19-2, Mississippi Code, Annotated.
7. A county or municipality that has an inadequate garbage collection and disposal system or an inadequate rubbish disposal system as required by Section 19-5-17 or 21-19-1, Mississippi Code, Annotated, may not receive funding assistance from this fund. Additionally, the county must have a waste tire collection program in place, as required by Section 17-17-409, Mississippi Code, Annotated, before a grant award can be approved by the Department.
8.
 - (a) A grantee may receive funds for the payment of up to fifty percent (50%) of the cost of employing a local solid waste enforcement officer. The costs of employment of a local enforcement officer shall be limited to salary and fringe benefits for purposes of these regulations.
 - (b) Enforcement officers employed with support from these funds shall comply with the conditions and work duties prescribed by the Department for solid waste enforcement officers.
9. If a grantee receives funds to clean up any unauthorized dumps on public or private property, the grantee shall make a reasonable effort to determine if a responsible party or person can be identified and, if so, to require that party or person to clean up the property. If the grantee is unable to locate or identify the responsible party or person, or if the grantee determines that party or person is financially or otherwise incapable of cleaning up the property, the grantee shall make a reasonable effort to recover any funds expended from any known responsible person or from any person subsequently located or identified. Any such funds recovered may be retained and used by the grantee for any lawful expenditure relating to the solid waste assistance grant award.
10. No grant shall be awarded for the purchase or lease of equipment or other property, unless it can be demonstrated that such equipment or property is integral to and will be primarily used for the successful achievement of the project purposes as described in Section A.1. For purposes of this section, property shall include structures, fencing, or other items, but not land purchases.

population is less than 10,000, the maximum funding level shall be \$15,000.

- (c) Grant applications shall be submitted on forms provided by the Department and shall contain the following items:
 - 1. a completed grant application form as provided by the Department;
 - 2. a detailed narrative description and a proposed budget of the planned activity;
 - 3. a discussion of how the project will be an integral part of the city/county/regional solid waste management plan for the area;
 - 4. a copy of any local, state, and/or federal permits, if applicable, to conduct the proposed activity;
- (d) A city and county may apply jointly for the competitive funds with one entity as the lead applicant.
- (e) If a county, municipality, regional solid waste management authority, or other multi-county entity uses the total population of a county or counties to apply for the maximum funding level allowed in Section B.2 of these regulations, the proposed project or program must provide for benefits and/or services to all persons included in the population base.
- (f) Any application submitted by a regional solid waste management authority or other multi-county entity must contain documents of authorization from a majority of the members.
- (g) Applications shall be evaluated and ranked with preference for approval based on the following factors:
 - 1. The applicant has not been previously funded under this grant category.
 - 2. The project is deemed creative and innovative.
 - 3. The funds requested will be used as leverage, or matching for additional funds.
 - 4. The project will result in significant enhancement or improvement of the solid waste management program or services of the project area.
 - 5. The technical and economic merits of the project appear superior to other projects.
 - 6. The project proposes a long term commitment of staff and monies by the applicant to a comprehensive solid waste management program rather than for just the proposed grant period.

4. A summary report shall be prepared and submitted to the Department with each reimbursement request, detailing the cost of the project and a summary of the activity conducted during the payment period.
5. The Commission may include other conditions as part of the grant award, which are determined necessary to reasonably manage the project and/or protect the environment.

- c) the costs of formally adopting the plan including the costs of public notice and hearing and other associated expenditures related to complying with the procedures outlined in state law and regulations for adoption of local solid waste management plans, and
- d) other miscellaneous costs such as publication costs, survey costs, mailing and delivery costs, and other items directly related to collecting information and preparing the plan.

Project costs must be specifically disclosed and justified in the proposed budget submitted with the grant application as described in Section III.B.2.

- 7. No grant shall be awarded under this program for the purchase or lease of equipment or other property.

B. Grant Application Procedures

In order to receive consideration for a grant award from the Commission on Environmental Quality, counties, municipalities, regional solid waste management authorities and other multi-county entities shall submit an application as per the following procedures:

- 1. The Department may receive planning grant applications at any time, but not later than April 30 of the funding year. All applications received before that date will be evaluated for consistency with these regulations, subject to the availability of funds.
- 2. Grant applications shall be submitted on a form provided by the Department and shall include a narrative description of the scope of work and an itemized budget for the planning project. The itemized budget shall indicate the overall total costs of conducting the planning effort and the amount of grant funds proposed to be applied towards the total cost of the planning effort.
- 3. Grant applicants that propose to utilize contractual assistance in preparing the plan shall include the name, the contact information, and the primary person(s) of contact for the contractor selected by the applicant and the reasons for the selection of the contractor.
- 4. Unless specifically approved by the Commission, applicants shall be limited to the following grant funding levels:
 - a) For counties, municipalities, regional solid waste management authorities, or multi-county entities whose latest census population is 75,000 or greater, the maximum funding level shall not exceed 50% of the total costs of conducting the planning project.
 - b) For counties, municipalities, regional solid waste management authorities, or multi-county entities whose latest census population is 25,000 or greater but less than 75,000, the maximum funding level shall not exceed 60% of the total costs of conducting the planning project.
 - c) For counties, municipalities, regional solid waste management authorities, or multi-county entities whose latest census population is less than 25,000, the maximum

C. Disapproval of Grant Applications

1. The Department may refuse to approve a grant application for any of the following reasons:
 - a) the Department determines that the planning project is not consistent with these regulations or with State laws or regulations governing the development of a local solid waste management plan;
 - b) the Department determines that the applicant has failed to provide a complete grant application as per Sections III.B.1 and/or III.B.2.;
 - c) the applicant is in violation of, or delinquent on any condition of a previously awarded grant by this Department;
 - d) the applicant has deliberately falsified information submitted as part of the grant application;
 - e) the Department determines that the applicant has proposed expenditures for grant project activities or components that are unnecessary or that exceed the usual and customary costs for such activities or components;
 - f) there are insufficient grant funds in the solid waste planning grants fund;
 - g) the grant application is ranked lower by the Department than other proposals based on the factors described in Part III.B.5; and
 - h) other appropriate factors as determined by the Commission on Environmental Quality.
2. Should the Department refuse to approve a grant application for any reason, the applicant may request a hearing before the Commission in accordance with Section 49-17-35, Mississippi Code, Annotated.

D. Conditions of Grant Award

1. The grantee shall comply with all applicable procurement and purchasing regulations established pursuant to state law.
2. The grantee shall ensure that the development and adoption of the local solid waste management plan shall be conducted in a manner consistent with the applicable state laws and regulations and with the comprehensive planning guidance provided by the Department for the development of a local solid waste management plan.
3. Upon completion of the grant project and adoption of the resulting plan, the grantee shall provide three official copies of the local solid waste management plan to the Department for review and consideration. Two of the copies shall be hard copies of the plan and one

APPENDIX

Intergovernmental Review Process

1. If the applicant proposes new facilities for construction and/or use, the following agencies shall be consulted prior to the formal submittal of a grant application concerning the proposed site location and the existence of any known or possible archaeological/cultural sites, endangered wildlife, wetlands, shellfish/coastal program impacts:
 - (a) Mississippi Department of Archives & History (For archaeological/cultural review);
 - (b) Mississippi Natural Heritage Program (For endangered wildlife review);
 - (c) U.S. Army Corps of Engineers (For wetlands review);
 - (d) Mississippi Department of Marine Resources (For shellfish/coastal review - Jackson, Harrison, and Hancock County projects only).
2. Where applicable, a written description of the project plan shall be submitted to the agencies listed in this section with a request for written comments and a determination on any required surveys, permits, or other actions.

Documentation of the applicant's request for comments, and any comments received in response to such request, shall be attached with the grant application, as required in Section B.1.c of these regulations.

**CITY OF CLINTON
SUPPLEMENTAL AGREEMENT No. 1**

WHEREAS, WE, Key, LLC, Contractors, and Travelers Casualty and Surety Company of America, Surety, entered into a contract with the city of Clinton, LPA, on the 19th day of January, 2010, for the construction of Federal Aid Project No. STP-0025-00(033) / 105586/701000, Hinds county, and,

WHEREAS: The contract is for the replacement of four bridges, namely, Kickapoo Road over Bogue Chitto Creek, SA2500000000197; Clinton Tinnin Road over Straight Fence Creek, SA2500000000200; McRaven Road over Smith Creek, SA2500000000164 and Magnolia Road over Branch Bogue Chitto Creek, SA2500000000408 within the City limits of Clinton, Mississippi, and,

WHEREAS: The new bridges are to be constructed in accordance with the requirements of the Office of State Aid Road Construction sheets included in the plans, and,

WHEREAS: The plan typical sections indicate a roadway width of 24 feet at the bridges and the bridge plan sheets require HP 14X73 steel H-piles with struts at approximate mid height, and,

WHEREAS: The Contractor has requested that the struts be eliminated, and,

WHEREAS: In accordance with the Office of State Aid Road Construction Drawing Number PC-14-09, which was not included in the plans, the maximum "H" for unbraced pile bents for a roadway width of 24 feet and HP 14X73 piles is 25'-0" and the apparent maximum unbraced "H" for the four bridges is 15.12 feet and occurs at the bridge on McRaven Road, and,

WHEREAS: The City, with the concurrence of MDOT and FHWA, agrees to eliminate the struts, and,

WHEREAS: The Office of State Aid Road Construction Drawing Number PC-14-09 shall be added to the plans only for the table indicating the Maximum "H" for unbraced pile bents. Construction of the pile bents shall be in accordance with details shown on the bridge sheet numbers 466 through 493, and,

WHEREAS: The quantities and pay item changes described in detail on Supplemental Sheet 3 of 4 will be made for the reasons stated above, and,

WHEREAS: No adjustment of contract time will be made as a result of this Supplemental Agreement.

This agreement in no way modifies or changes the original contract of which it becomes a part, except as specifically stated herein.

**CITY OF CLINTON
SUPPLEMENTAL AGREEMENT No. 1**

NOW, THEREFORE, WE, Key, LLC, Contractor, and Travelers Casualty and Surety Company of America, Surety, hereby agree to said Supplemental Agreement consisting of the above mentioned items and prices and agree that this Supplemental Agreement is hereby made a part of the original contract to be performed under the specifications thereof, and that the original contract is in full force and effect, except insofar as it might be modified by this Supplemental Agreement.

DATED, this 7th day of June, 2010.

Travelers Casualty and Surety Company of America
SURETY

By: Charles F. Porter
CHARLES F. PORTER, ATTORNEY IN FACT

RECOMMENDATION FOR APPROVAL:

Rodney G. Gray, P.E.
LPA Professional

By: [Signature]
Key, LLC
CONTRACTOR

[Signature]
MDOT District Engineer

MDOT State Construction Engineer

APPROVED: _____, 20____

LPA Official

**CITY OF CLINTON
SUPPLEMENTAL AGREEMENT No. 1
SUPPLEMENTAL SHEET**

PROJECT NUMBER: STP-0025-00(033)/105586/701000

DETAIL EXPLANATION OF NECESSITY OF WORK INVOLVED

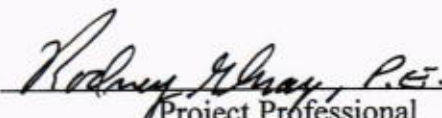
The new bridges are to be constructed in accordance with the requirements of the Office of State Aid Road Construction sheets included in the plans. The plan typical sections indicate a roadway width of 24 feet at the bridges and the bridge plan sheets require HP 14X73 steel H-piles with struts at approximate mid height. The Contractor has requested that the struts be eliminated. In accordance with the Office of State Aid Road Construction Drawing Number PC-14-09, which was not included in the plans, the maximum "H" for unbraced pile bents for a roadway width of 24 feet and HP 14X73 piles is 25'-0". The maximum unbraced "H" for the four bridges is approximately 15.12 feet and occurs at the bridge on McRaven Road. The maximum "H" (25'-0") is greater than the apparent maximum "H" of the four bridges (15.12') therefore eliminating the struts should not affect the integrity of the bridges.

The following quantities and pay item changes will be made to the contract for the reasons stated above:

907-804-A001	Bridge Concrete, Class AA	deduct 12.26 CY
805-A001	Reinforcement	deduct 166 LB
810-A001	Structural Steel	deduct 11,070 LB,

JUSTIFICATION OF UNIT PRICES SUBMITTED

Unit prices for the changes detailed in this Supplemental Agreement are the contract bid prices that were established under the competitive bid process.

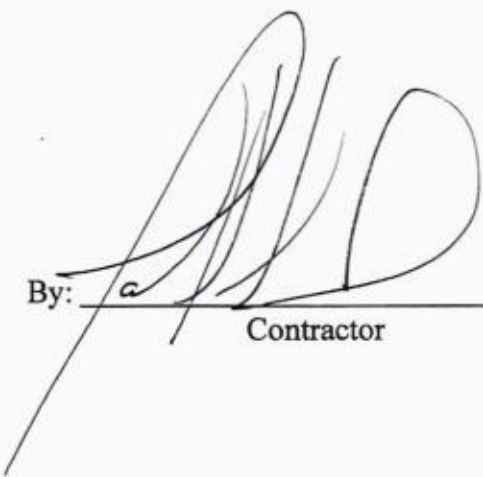

Project Professional

**CITY OF CLINTON
SUPPLEMENTAL AGREEMENT No. 1
SUPPLEMENTAL SHEET**

PROJECT NUMBER: STP-0025-00(033)/105586/701000

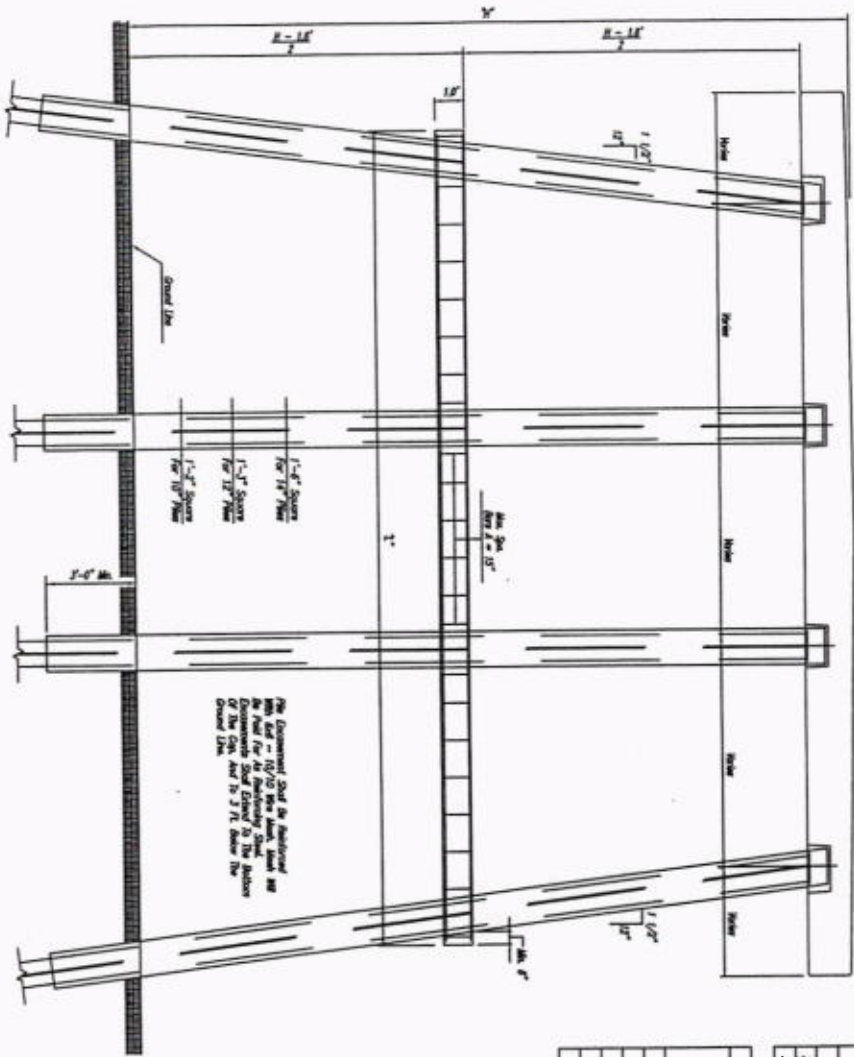
DETAIL ANALYSIS OF UNIT PRICES

Unit prices for the changes detailed in this Supplemental Agreement are the contract bid prices that were established under the competitive bid process.

By: 

Contractor

If additional space is needed, use extra sheets.



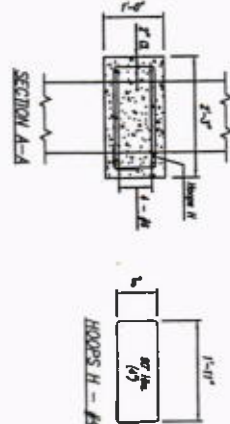
STEEL PILE ENCASEMENT AND STRUT DETAILS

MAXIMUM "H" FOR UNBRACED PILE BENT

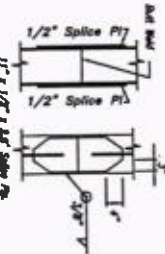
Bracing Ratio	Steel H-Fib	Reinforced Concrete Pile
10-10	10-10	10-10
15-15	15-15	15-15
20-20	20-20	20-20
25-25	25-25	25-25
30-30	30-30	30-30
35-35	35-35	35-35
40-40	40-40	40-40
45-45	45-45	45-45
50-50	50-50	50-50
55-55	55-55	55-55
60-60	60-60	60-60
65-65	65-65	65-65
70-70	70-70	70-70
75-75	75-75	75-75
80-80	80-80	80-80
85-85	85-85	85-85
90-90	90-90	90-90
95-95	95-95	95-95
100-100	100-100	100-100

MAXIMUM "H" FOR BRACED PILE BENT

Bracing Ratio	Steel H-Fib	Reinforced Concrete Pile
10-10	10-10	10-10
15-15	15-15	15-15
20-20	20-20	20-20
25-25	25-25	25-25
30-30	30-30	30-30
35-35	35-35	35-35
40-40	40-40	40-40
45-45	45-45	45-45
50-50	50-50	50-50
55-55	55-55	55-55
60-60	60-60	60-60
65-65	65-65	65-65
70-70	70-70	70-70
75-75	75-75	75-75
80-80	80-80	80-80
85-85	85-85	85-85
90-90	90-90	90-90
95-95	95-95	95-95
100-100	100-100	100-100



PILE SPACE FOR HP 10 x 42 STEEL PILE



PILE SPACE FOR HP 12 x 53 STEEL PILE

PILE SPACE FOR HP 14 x 73 STEEL PILE



GENERAL NOTES

1. All dimensions are in feet and inches. Round off to nearest 1/4 inch.

2. All dimensions are to be maintained throughout the construction.

3. All dimensions are to be maintained throughout the construction.

4. All dimensions are to be maintained throughout the construction.

5. All dimensions are to be maintained throughout the construction.

6. All dimensions are to be maintained throughout the construction.

7. All dimensions are to be maintained throughout the construction.

8. All dimensions are to be maintained throughout the construction.

9. All dimensions are to be maintained throughout the construction.

10. All dimensions are to be maintained throughout the construction.

ESTIMATED QUANTITIES

ITEM	QUANTITY	UNIT
1. Steel Pile Encasement	1.00	CU YD
2. Steel Pile Encasement	1.00	CU YD
3. Steel Pile Encasement	1.00	CU YD
4. Steel Pile Encasement	1.00	CU YD
5. Steel Pile Encasement	1.00	CU YD
6. Steel Pile Encasement	1.00	CU YD
7. Steel Pile Encasement	1.00	CU YD
8. Steel Pile Encasement	1.00	CU YD
9. Steel Pile Encasement	1.00	CU YD
10. Steel Pile Encasement	1.00	CU YD

STEEL PILE ENCASEMENT AND STRUT DETAILS

DATE	2-15-08	BY	PC-14-08
REVISION	1	DATE	2-15-08
REVISION	2	DATE	2-15-08
REVISION	3	DATE	2-15-08
REVISION	4	DATE	2-15-08
REVISION	5	DATE	2-15-08
REVISION	6	DATE	2-15-08
REVISION	7	DATE	2-15-08
REVISION	8	DATE	2-15-08
REVISION	9	DATE	2-15-08
REVISION	10	DATE	2-15-08

**CITY OF CLINTON
SUPPLEMENTAL AGREEMENT No. 2**

WHEREAS, WE, Key, LLC, Contractors, and Travelers Casualty and Surety Company of America, Surety, entered into a contract with the city of Clinton, LPA, on the 19th day of January, 2010, for the construction of Federal Aid Project No. STP-0025-00(033) / 105586/701000, Hinds county, and,

WHEREAS: The contract is for the replacement of four bridges, namely, Kickapoo Road over Bogue Chitto Creek, SA2500000000197; Clinton Tinnin Road over Straight Fence Creek, SA2500000000200; McRaven Road over Smith Creek, SA2500000000164 and Magnolia Road over Branch Bogue Chitto Creek, SA2500000000408 within the City limits of Clinton, Mississippi, and,

WHEREAS: The Contract Plans indicate Hot Mix Asphalt, ST, 19mm Mixture for trench widening and new construction at each bridge end, and,

WHEREAS: The theoretical quantity on each side of the bridges is approximately 50 tons, and,

WHEREAS: The local hot mix asphalt plants are producing 12.5mm mixture and will not make a special production of 19mm mixture for this small amount, and,

WHEREAS: The Contractor has requested the substitution of Hot Mix Asphalt, ST, 12.5mm Mixture in lieu of the Hot Mix Asphalt, ST, 19mm Mixture specified in the Contract Plans , and,

WHEREAS: The City, with the concurrence of MDOT and FHWA, agrees to the substitution as described above, and,

WHEREAS: No adjustment of contract cost or contract time will be made as a result of this Supplemental Agreement.

This agreement in no way modifies or changes the original contract of which it becomes a part, except as specifically stated herein.

**CITY OF CLINTON
SUPPLEMENTAL AGREEMENT No. 2**

NOW, THEREFORE, WE, Key, LLC, Contractor, and Travelers Casualty and Surety Company of America, Surety, hereby agree to said Supplemental Agreement consisting of the above mentioned items and prices and agree that this Supplemental Agreement is hereby made a part of the original contract to be performed under the specifications thereof, and that the original contract is in full force and effect, except insofar as it might be modified by this Supplemental Agreement.

DATED, this 7th day of June, 2010.

Travelers Casualty and Surety Company of America,
SURETY

By: Charles F. Porter
CHARLES F. PORTER, ATTORNEY IN FACT

RECOMMENDATION FOR APPROVAL:

Rodney A. Gray, P.E.
LPA Professional

By: [Signature]
Key, LLC
CONTRACTOR

[Signature]
MDOT District Engineer

MDOT State Construction Engineer

APPROVED: _____, 20____

LPA Official

MDOT 5th DISTRICT - LPA

JUN 15 2010

**CITY OF CLINTON
SUPPLEMENTAL AGREEMENT No. 2
SUPPLEMENTAL SHEET**

PROJECT NUMBER: STP-0025-00(033)/105586/701000

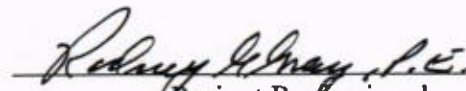
DETAIL EXPLANATION OF NECESSITY OF WORK INVOLVED

Hot Mix Asphalt, ST, 19mm Mixture is specified in the Contract Plans for trench widening and first lift of hot mix asphalt in the new construction areas of the bridge replacement. The theoretical tonnage at each side of a bridge is approximately 50 ton of 19mm mixture. The local asphalt plants are not producing 19mm mixtures at this time. The asphalt plants are producing Hot Mix Asphalt, ST, 12.5mm mixture. It is not economically feasible for them to produce this small amount of mixture.

There are no changes to the pay items, quantities, contract costs or contract time.

JUSTIFICATION OF UNIT PRICES SUBMITTED

Unit prices for the changes detailed in this Supplemental Agreement are the contract bid prices that were established under the competitive bid process.



Project Professional

**CITY OF CLINTON
SUPPLEMENTAL AGREEMENT No. 2
SUPPLEMENTAL SHEET**

PROJECT NUMBER: STP-0025-00(033)/105586/701000

DETAIL ANALYSIS OF UNIT PRICES

Unit prices for the changes detailed in this Supplemental Agreement are the contract bid prices that were established under the competitive bid process.

By:  _____
Contractor

If additional space is needed, use extra sheets.



This is an AGREEMENT, effective as of _____ (effective date) by and between **City of Clinton, MS** hereafter called **OWNER** and **Williford, Gearhart & Knight, Inc., Engineers & Surveyors** (hereafter called **WGK**). The OWNER hereby retains WGK for certain Professional Services, hereafter called **Services**, for the **2010 NRCS EWP Bank Stabilization Project (Hampstead Blvd./Broadway Street)**, hereafter called the **Project**. The OWNER and WGK also hereby acknowledge the attachment of the items listed herein below, and agree that all such documents shall be incorporated into this AGREEMENT by reference:

- ☒ The OWNER's responsibilities, incorporated herein as Exhibit A, consisting of 1 page.
- ☒ The Scope of Professional Services, incorporated herein as Exhibit B, consisting of 4 pages.
- ☒ The Compensation Schedule, incorporated herein as Exhibit C, consisting of 2 pages.

The OWNER's official designated representative for this Project shall be: Richard Broome, P.E., City Engineer. WGK's official designated representative for this Project shall be: Bill Owen, P.E.. The WGK Project Number shall be: 2010-251-00

The OWNER hereby employs WGK to perform the Professional Services described herein; WGK agrees to provide the Services prescribed herein, and the OWNER agrees to compensate WGK for the Services rendered under this AGREEMENT. The OWNER and WGK further agree to the following general terms and conditions:

1. Basic Agreement

- A. WGK shall provide, or cause to be provided, the Services set forth in this AGREEMENT, and OWNER shall compensate WGK for such Services as set forth in this AGREEMENT.

2. Controlling Law

- A. The laws of the State of Mississippi shall govern the validity, interpretation and performance of the terms set forth in this AGREEMENT. This AGREEMENT is made between the OWNER and WGK, and it is agreed that this AGREEMENT constitutes the entire AGREEMENT, superseding any prior negotiations, correspondence or agreements, either oral or written.
- B. If any provision contained in this AGREEMENT is held illegal, invalid or unenforceable, for any reason, the remaining provisions shall remain unimpaired.
- C. Neither party to this AGREEMENT shall assign this AGREEMENT or any portion thereof, without the written consent of the other party.
- D. This AGREEMENT, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

3. Scope of Professional Services

- A. The person designated by WGK above shall be the official contact in responsible charge of the Services to be rendered under this AGREEMENT, and shall be authorized to act with authority on its behalf in respect to all aspects of the Services provided or performed pursuant to this AGREEMENT.

- B. The Scope of Professional Services, hereafter Services, set forth in this AGREEMENT is based on facts known at the time of execution of this AGREEMENT, including, if applicable, information supplied by the OWNER. In the event the Scope is well defined, such scope will be set forth in some detail on an attachment to this AGREEMENT. For other projects involving conceptual planning, preliminary engineering, or project development Services, the Scope may not be fully definable during the initial phases of the Project. As the Project progresses, facts discovered may indicate that the Scope must be redefined. Changes in Scope may warrant additional Services which are not a part of the agreed upon compensation. Such additional Services shall be paid for by the OWNER in accordance with WGK's prevailing hourly billing rate schedule, as shown on an attachment to this AGREEMENT.
- C. The commitments set forth in this AGREEMENT are based on the expectation that all of the Services described in this AGREEMENT will be performed and provided as set forth herein. In the event OWNER reduces the Services to be performed by WGK, OWNER agrees to release, hold harmless, defend and indemnify WGK from any and all claims, damages, losses or costs associated with or arising out of any reduction in Services.
- D. It is acknowledged by both parties that the Scope of Services does not include any Services related to any lead, asbestos, or hazardous or toxic materials. In the event WGK or any other party knowingly encounters lead, asbestos, or hazardous or toxic materials at the project site, or should it become



known in any way that such materials may be present at the project site or any adjacent areas that may affect the performance of the Services, WGK may, at its own option and without liability for consequential or any other damages, suspend performance of Services on the Project until the OWNER retains appropriate special consultant(s) or contractor(s) to identify, abate and/or remove the lead, asbestos, or hazardous or toxic materials, warrants that the project site is in full compliance with applicable laws and regulations, and authorizes WGK to resume work on the project site.

4. Additional Services

- A. If authorized by OWNER, or if required because of changes in the Project, WGK shall furnish Services in addition to those set forth above.
- B. OWNER shall pay WGK for such additional Services as follows: For additional Services of WGK's employees engaged directly on the Project, an amount equal to the cumulative hours charged to the Project by each class of WGK employee's, times the standard hourly billing rates for each applicable billing class; plus reimbursable expenses and WGK's sub-consultant's charges, if any.

5. Period of Service

- A. The term of this AGREEMENT shall commence upon the effective date specified above, and it shall terminate within 30 days of completion of the Project, unless the term is formally extended or terminated by separate written amendment.

6. Payment Procedures

- A. WGK will prepare a monthly invoice in accordance with WGK's standard invoicing practices and submit the invoice to OWNER.
- B. Invoices are due and payable within 30 days of receipt by the OWNER. If OWNER fails to make any payment due WGK for Services and expenses within 30 days after receipt of WGK's invoice, the amounts due WGK will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said 30th day. In addition, WGK may, without liability, after giving seven days written notice to OWNER, suspend Services under this AGREEMENT until WGK has been paid in full all amounts due for Services, expenses, and other related charges. Payments will be credited first to interest and then to principal.
- C. WGK's total compensation shall be made on the lump-sum amount basis, on an hourly-reimbursable basis, or on a cost plus-fixed-fee basis, as specified herein, plus reimbursable expenses.
- D. WGK shall receive payment for reimbursable expenses incurred during the course of performing the Services described herein. Reimbursable expenses shall include, but not be limited to, the

costs of travel, lodging, mileage, meals, postage, photocopy, printing and testing, and the cost of any sub-consultants or subcontract services required for performance of the Services.

- E. WGK's total compensation set forth herein is conditioned on the completion of the Services specified herein within an established number of months of the effective date of this AGREEMENT. Should the time to complete this project be extended beyond this period due to circumstances beyond WGK's control, the total compensation to WGK shall be adjusted upward accordingly by amendment of this AGREEMENT.

7. Standard of Care

- A. The Services performed by WGK under this AGREEMENT will be performed and conducted in a manner consistent with that degree of knowledge, skill and judgment ordinarily possessed by members of the profession in good standing in the community and practicing in the same locality under similar conditions at the time these Services are being provided.
- B. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, document or otherwise, which is provided as the result of this AGREEMENT. Upon written notice to WGK and by mutual agreement between the parties, WGK will, without additional compensation, correct any Services not meeting such a standard.

8. Successors, Assigns, and Beneficiaries

- A. Neither OWNER nor WGK may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this AGREEMENT without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT.
- B. Nothing contained in this AGREEMENT shall create a contractual relationship with, or a cause of action in favor of a third party against either the OWNER or WGK. The Services rendered under this AGREEMENT are being performed solely for the OWNER's benefit, and no other entity, including the OWNER's agents, shall have any claim against WGK because of this AGREEMENT or the performance or non-performance of Services provided hereunder.

9. Ownership of Documents

- A. The OWNER acknowledges that any documents prepared by WGK incident to this AGREEMENT are considered as instruments of professional service.



As such, all instruments of service prepared by WGK under this AGREEMENT shall remain the property of WGK.

- B. Further, by execution of this AGREEMENT, the OWNER agrees not to use, reuse or make any modification to the documents provided by WGK incident to this AGREEMENT without the prior written authorization of WGK, and OWNER agrees that he shall be responsible for OWNER's unauthorized modification or reuse.

10. Certifications, Guarantees and Warranties

- A. WGK shall not be required to sign any documents, no matter by whom requested, that would result in WGK's having to certify, guarantee or warrant the quality of Services or the existence of conditions not easily ascertained by WGK. OWNER also agrees that payment of any amount due and owing to WGK shall not in any way be considered contingent upon WGK's signing of any such certification(s).
- B. The OWNER acknowledges and understands that the documents prepared by WGK may represent imperfect data and may contain errors, omissions, conflicts, inconsistencies, code violations and improper use of materials. Such deficiencies will be corrected when identified. The OWNER agrees to carefully study and compare the individual contract documents and report at once in writing to WGK any deficiencies the OWNER may discover. The OWNER further agrees to require each contractor and subcontractor to likewise study the documents and report at once any deficiencies discovered.
- C. The OWNER shall resolve all reported deficiencies in the documents with WGK prior to awarding any contracts or subcontracts, or starting any work. If WGK, without additional time or additional expense, cannot resolve any deficiencies, WGK shall so inform the OWNER in writing.

11. Owner's Responsibilities

- A. The person designated by the OWNER above shall be the official contact responsible for the Services to be rendered under this AGREEMENT, and shall be authorized to act with authority on its behalf in respect to all aspects of the Services provided or performed pursuant to this AGREEMENT. The OWNER's representative shall examine and promptly respond to WGK's inquiries and submissions, and shall give prompt written notice to WGK whenever he observes or otherwise becomes aware of any defect in the Services or Project.
- B. The OWNER shall provide WGK free, safe and timely access to any premises necessary for WGK to perform the Services to be rendered under this AGREEMENT. OWNER shall also notify any and all possessors of the Project site that the OWNER has granted WGK access to the Project site.

- C. The OWNER will furnish to WGK information identifying the type and location of underground improvements. WGK (or its authorized subconsultant) will prepare a plan that shows the locations intended for subsurface penetrations with respect to assumed locations of underground improvements. The OWNER will approve of the locations of subsurface penetrations prior to their being made. The OWNER agrees, to the fullest extent permitted by law, to waive all claims and causes of action against WGK and anyone for whom WGK may be legally liable, for damages to underground improvements that result from subsurface penetration locations incorrectly depicted, undisclosed or unknown to WGK.

- D. The OWNER shall promptly report to WGK any defects or suspected defects in WGK's Services of which the OWNER becomes aware, so that WGK may take measures to minimize the consequences of such a defect. The OWNER further agrees to impose a similar notification requirement on all contractors in its OWNER/Contractor contract and shall require all subcontracts at any level to maintain a like requirement. Failure by OWNER and OWNER'S contractors or subcontractors to notify WGK shall relieve WGK of the costs to remedy the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

- E. When the OWNER is a public body, such OWNER shall cause this AGREEMENT to be approved by the governing board, executed by the executive officers, and duly recorded in the official minutes of the body, and such OWNER shall provide WGK a certified copy of said minutes as evidence that the AGREEMENT has been properly recorded. When the OWNER is a private entity, such entity shall cause this AGREEMENT to be approved by the governing board when appropriate, executed by the executive officers, and duly recorded in the records of the entity, and such OWNER shall provide WGK a certified copy of a corporate resolution as evidence that the AGREEMENT has been properly recorded.

12. Cost Control and Contingency

- A. Any opinion of probable cost prepared by WGK under this AGREEMENT is supplied for the general use and guidance of the OWNER only. Because WGK has no control over private contract negotiations, competitive bidding or market conditions, WGK cannot guarantee the accuracy of such opinions as compared to negotiated prices, contract bids or actual costs incurred by the OWNER.
- B. The OWNER and WGK agree that certain increased costs and changes may be required because of



possible omissions, ambiguities or inconsistencies in the drawings and specifications prepared by WGK and, therefore, that the final cost of the Project may exceed the estimated cost. The OWNER agrees to set aside a reserve in the amount of five percent of the Project costs as a contingency to be used as required, to pay for any such increased costs and changes. The OWNER further agrees to make no claim by way of direct or third-party action against WGK or its sub-consultants with respect to any increased costs within the contingency because of such changes or because of any claims made relating to such changes.

13. Insurance

- A. WGK agrees to maintain statutory Workers' Compensation insurance coverage, comprehensive general liability coverage, automobile liability insurance coverage, and professional liability insurance coverage in appropriate amounts during the term of performance of this AGREEMENT.
- B. Prior to the commencement of the construction work, the OWNER shall require the Contractor and any Subcontractor to submit evidence that he (they) have obtained for the period of the construction contract and the guarantee period comprehensive general liability insurance coverage (including completed operations coverage). This coverage shall provide for bodily injury and property damage arising directly or indirectly out of, or in connection with, the performance of the work under the construction contract, and have a limit of not less than \$1,000,000 for all damages arising out of bodily injury, sickness or death of one person and an aggregate of \$2,000,000 for damage arising out of bodily injury, sickness and death of two or more persons in any one occurrence. The Property damage portion will provide for a limit of not less than \$1,000,000 for all damages arising out of injury to or destruction of property of others arising directly or indirectly out of or in connection with the performance of the work under the Construction Contract and in any one occurrence including explosion, collapse and underground explosions. Included in such coverage will be contractual coverage sufficiently broad to insure the provision of the indemnity clause specified herein. The comprehensive general liability insurance will include as additional named insured's the following: the OWNER, WGK, and each of their officers, agents, employees and assigns.
- C. Before commencement of the work, the OWNER shall require that the contractor and any subcontractors submit written evidence that he (they) have obtained for the period of the Construction Contract, Builders Risk "All Risk" Completed Value Insurance Coverage (including earthquake and flood) upon the entire Project

which is the subject of the Construction Contract. Such insurance shall include as additional named insured's the following: the OWNER, WGK, and each of their officers, agents, employees, assigns, and any other persons with an insurable interest as may be designated by the OWNER. Such insurance may have a deductible clause not to exceed \$5,000, except that the earthquake deductible may be in accordance with generally accepted insurance practices in the locale where the coverage is issued.

14. Contractor Relations

- A. WGK shall not at any time supervise, direct, or have control over the services being provided or the work being performed by a contractor or any other party, nor shall WGK have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by any other party, for safety precautions and programs incident to another party's work progress, nor for any failure of any other party to comply with laws and regulations applicable to the other party's work.
- B. Neither the professional activities of WGK nor the presence of WGK or its employees or subconsultants at a project site, shall relieve any contractor of its obligations, duties or responsibilities to perform, superintend and coordinate the work in accordance with the intent of the contract documents, and with any health or safety precautions required by any regulatory agency. WGK and its employees or subconsultants have no authority to exercise any control over any contractor or its employees or any subcontractor in connection with their work or any health or safety programs or procedures.
- C. The Owner agrees that its contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in OWNER's contract with its contractor.
- D. WGK neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between OWNER and such contractor.
- E. WGK shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except WGK's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made on interpretations or clarifications of the construction contract given by OWNER without consultation and advice of WGK.

15. Dispute Resolution and Termination

- A. In the event any controversy, dispute or disagreement arising out of or relating to this



AGREEMENT, the breach thereof, or the subject matter thereof, the parties shall initially attempt to resolve the controversy, dispute or disagreement through non-binding mediation conducted by a mutually acceptable mediator within 90 days of written notice of any such controversy, dispute or disagreement. If the parties are unable to resolve any controversy, dispute or disagreement through non-binding mediation, the controversy, dispute or disagreement shall be resolved through binding arbitration. The arbitration hearing shall be conducted in the offices of WGK located in Clinton, Mississippi in accordance with an arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and shall be binding not only on all parties to the AGREEMENT, but on any other entity controlled by, in control of or under common control with the party to the extent that such affiliate joins in the arbitration. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties acknowledge that the arbitrator may award the prevailing party with its costs incurred as part of the arbitration proceeding, including the fees charged by the arbitrator and reasonable attorney fees. Unless otherwise assessed by the arbitrator, all other costs of the arbitration shall be equally divided and paid by the parties. In the event a party hereto fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other party is entitled to costs of suit including reasonable attorney fees for having to comply with this arbitration provision and defend or enforce the arbitration award or having to defend the arbitration agreement.

- B. Either the OWNER or WGK may terminate this AGREEMENT at any time with or without cause upon giving the other party seven (7) calendar day's prior written notice. The OWNER shall, within thirty (30) calendar days of termination, pay WGK for all Services rendered and all costs incurred up to the date of termination, plus the reasonable costs incurred in the suspension of the work, in accordance with the compensation provisions of this AGREEMENT and the standard hourly billing rates.

16. Hold Harmless and Limitation of Liability

- A. WGK agrees, to the fullest extent permitted by law, to indemnify and hold harmless OWNER from any damage, liability or cost, including reasonable attorney's fees and costs of defense, to the extent caused by WGK's negligent acts, errors or omissions, and those of his agents, or any party to whom WGK is legally liable, and arising from the Project that is subject to this AGREEMENT. The

OWNER also agrees, to the fullest extent permitted by law, to indemnify and hold harmless WGK from any damage, liability or cost, including reasonable attorney's fees and costs of defense, to the extent caused by OWNER's negligent acts, errors or omissions, and those of his agents, or any party to whom OWNER is legally liable, and arising from the Project this is subject to this AGREEMENT.

- B. The OWNER hereby agrees that WGK's total aggregate liability to the OWNER, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of, or in any way related to, the work authorized herein, or this AGREEMENT, from any cause or causes, including, but not limited to, WGK's negligence, errors, omissions, strict liability, breach of contract or breach of warranty, shall not exceed the amount of the net fees earned under any AGREEMENT with a private entity, or the minimum amount that is allowed under the prevailing laws of the State of Mississippi under any AGREEMENT with a public entity.
- C. The OWNER and WGK recognize that a determination of the OWNER'S actual damages in the event of WGK's negligence, errors, omissions, breach of contract, or breach of warranty will be difficult to calculate and are not subject to being readily ascertained. In order to fairly compensate the OWNER for its actual damages in the event of WGK's negligence, errors, omissions, breach of contract, or breach of warranty, the OWNER and WGK agree that the maximum amount that may be recovered by the OWNER from WGK shall be the amount of the net fees earned by WGK under the terms of this AGREEMENT. The OWNER and WGK agree that said amount shall constitute a bona fide liquidated damage provision intended to fully and completely compensate the OWNER for actual damages that are difficult to determine and are not readily ascertainable.

17. Force Majeure

- A. If events beyond the control of OWNER or WGK including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, or any act or regulation of any government entity, result in the delay to any schedule established in this AGREEMENT, such schedule shall be amended to the extent necessary to compensate for such delay.
- B. In the event such delay exceeds 60 calendar days, OWNER also agrees that WGK shall be entitled to an equitable upward adjustment in compensation for any additional costs incident to the delay.

18. Total Agreement

- A. This AGREEMENT (consisting of pages 1 to 6 inclusive together with any expressly incorporated exhibits and attachments), constitutes the entire



AGREEMENT between the OWNER and WGK and supersedes all prior written or oral understandings. This AGREEMENT may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

B. The persons executing this AGREEMENT below hereby certify and warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT, on the day and year first above written.

WGK: WILLIFORD, GEARHART & KNIGHT, INC.

OWNER: City of Clinton, MS

Name: Bill Owen, P.E., Principal
ATTEST:

Name: Rosemary Aultman, Mayor
ATTEST:

Name: Mike McKenzie, P.E., Principal

Name: Russell Wall, City Clerk

WGK's address for giving formal notice is:
204 West Leake Street
Clinton, MS 39056

OWNER's address for giving formal notice is:
P.O. Box 156
Clinton, MS 39060





This Exhibit A, consisting of 1 page is referred to in and is hereby considered a part of the Professional Services Agreement effective _____ between **City of Clinton, MS** (hereafter called **OWNER**) and **Williford, Gearhart & Knight, Inc., Engineers & Surveyors** (hereafter called **WGK**), for the provision of professional services described as **2010 NRCS EWP Bank Stabilization Project (Hampstead Blvd./Broadway Street)**, (hereafter called Project). The Owner's responsibilities are described below as:

1. Provide the necessary support and assistance in a timely manner so as not to delay the services of WGK.
2. Provide WGK all criteria, design and construction standards and full information as to the OWNER's requirements for the Project.
3. Designate in writing a person authorized to act as the OWNER's representative. The OWNER or his representative shall receive and examine documents submitted by WGK, interpret and define the OWNER's policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of WGK's services.
4. Furnish to WGK complete land deed records and title opinions for all lands on the Project site which shall include, but not be limited to, ownership, easements, rights-of-way, encroachments, zoning and deed restrictions.
5. Furnish existing soils data including but not limited to reports, test borings, test pits, probing, subsurface explorations, soil bearings values, percolation test, ground corrosion and resistivity test, all with appropriate professional interpretation.
6. Furnish existing laboratory tests, air and water pollution tests, reports and inspections of samples, materials or other items required by law or by governmental authorities having jurisdiction over this Project.
7. Provide legal, accounting, and insurance counseling services necessary for the Project, legal review of the Construction Contract Documents, and such auditing services as the OWNER may require to account for expenditures of sums paid to the Contractor.
8. Furnish permits and approvals from all governmental authorities having jurisdiction over this Project and from others as may be necessary for completion of the Project.
9. Furnish above services at the OWNER's expense and in such manner that WGK may rely upon them in the performance of his services under this Agreement.
10. Protect and preserve all survey stakes and markers placed at the Project site prior to the assumption of this responsibility by the Contractor and bear all cost of replacing stakes or markers damaged or removed during said time interval.
11. Guarantee full and free access for WGK to enter upon all property required for the performance of WGK's services under this Agreement.
12. Give prompt written notice to WGK whenever the OWNER observes or otherwise becomes aware of any defect in the Project or other event which may substantially affect WGK's performance of services under this Agreement.
13. Compensate WGK for the services rendered under this Agreement in a timely manner.
14. Bear the costs of permits, legal advertisements, notices, approvals, and other direct expenses incident to completion of the Project.
15. Bear all costs incident to compliance with or performance of the requirements of this provision.



This Exhibit B, consisting of 4 pages is referred to in and is hereby considered a part of the Professional Services Agreement effective _____ between City of Clinton, MS (hereafter called OWNER) and Williford, Gearhart & Knight, Inc., Engineers & Surveyors (hereafter called WGK) for the provision of professional services described as 2010 NRCS EWP Bank Stabilization Project (Hampstead Blvd./Broadway Street), (hereafter called Project). The scope of professional services is described below:

1. **Basic Services:** WGK agrees to perform the professional services specified herein, as necessary for the successful prosecution of the Project, including normal civil engineering and land surveying services related to the planning, design and construction phases of the Project, as described in detail as follows:
2. **Design Phase Services:** Upon receipt of the written authorization of the OWNER to proceed with the Design Phase, if and where applicable, WGK shall:
 - A. Consult with the OWNER to ascertain the specific requirements of the Project, to review the scope of professional services to be rendered, and to discuss the scope of the intended construction contract.
 - B. Complete the detailed field survey data collection of the project area to obtain accurate points for use during the design.
 - C. Perform the detailed design for the Project in accordance with the design alternative selected by the OWNER.
 - D. Prepare detailed construction plans, specifications, and contract documents required for the PROJECT, and submit same to the OWNER and appropriate regulatory agencies for review and approval.
 - E. Prepare a final Opinion of Probable Construction Cost based on the final design.
 - F. Design the PROJECT in conformance with all applicable Federal, State and local standards for air or water pollution such that all required approvals, permits and certifications may be obtained.
 - G. Provide deductive alternates, where feasible, so that should the lowest responsive bid for construction of the project exceeds the funds available, deductive alternatives can be taken to reduce the bid amount and allow budget flexibility.
 - H. Provide design of facilities to be used by the public such that access shall be available to the handicapped.
 - I. Prepare documents which include forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond.
 - J. Comply with all pertinent provisions of the regulations of the U.S. Department of Commerce issued pursuant to the Civil Rights Act of 1964, in regard to nondiscrimination in employment because of race, religion, color, sex, or national origin, where applicable.
 - K. Advise the OWNER regarding the need for other special services or consultants that may be needed by WGK to fulfill the requirements identified by the OWNER.
 - L. Assist the OWNER in securing final approvals of the Plans, Specifications and Contract Documents from the appropriate regulatory agencies, including any modifications to the documents and follow-up contacts as needed to secure such approvals.
 - M. Furnish Advertisement for Bids to the OWNER to complete and submit to newspapers, trade journals, contractors, minority groups, subcontractors and suppliers, as appropriate.
 - N. Investigate reported omissions and discrepancies in the plans, specifications and contract documents, and formulate and mail addenda as needed.
 - O. Attend and assist in conducting the bid opening with OWNER and Contractors.
 - P. Analyze bids received for irregularities, errors or omissions.
 - Q. Review proof of bidder's qualifications and recommend contract award or rejection to the OWNER.
 - R. Prepare and distribute certified tabulation of bids for project to OWNER, Contractors and other parties as appropriate.
 - S. Prepare a bid package in accordance with the regulatory/funding program requirements, and submit same to the appropriate agencies for review and approval.
 - T. Prepare a Notice-of-Award and assist in securing its execution by successful Contractor.
 - U. Prepare contract documents for signature by Contractor and assist the OWNER in securing their execution, and prepare Notice-to-Proceed to Contractor for PROJECT.
 - V. Prepare and distribute contract price estimate breakdown to OWNER and Contractor, as appropriate.



- W. Assist in scheduling and conducting a pre-construction conference with OWNER, Contractor, utility companies, regulatory agencies, and other parties as appropriate.
 - X. Provide the OWNER copies of the plans, specifications, and contract documents as requested.
3. **Contract Administration Phase Services:** Upon receipt of the written approval of the OWNER and appropriate regulatory agencies of the Construction Contract prepared based upon the Contract Documents compiled by WGK, and upon receipt of the written authorization of the OWNER to proceed with the construction activities, if and where applicable, WGK shall:
- A. Function as the OWNER's representative with duties and responsibilities and limitations of authority as described in the General Conditions to the Construction Contract Documents, and the other provisions set forth herein.
 - B. Advise and consult with the OWNER during the construction activities, and assist the OWNER in the issuance of appropriate instructions to the Contractor.
 - C. Establish appropriate survey bench marks and survey control points in close proximity to the PROJECT for use by the Contractor in laying out the work.
 - D. Make periodic visits to the site of the construction to observe the progress and quality of the construction work and to determine, in general, if the results of the construction work are in accordance with the Plans and the Specifications. On the basis of his on-site observations as an ENGINEER, he shall endeavor to guard the OWNER against apparent defects and deficiencies in the permanent work constructed by the Contractor, but does not guarantee the performance of the Contractor. The ENGINEER shall not be required to make exhaustive or continuous on-site observations to verify the quality or quantity of the construction work. Visits and observations by ENGINEER and/or construction review personnel are not intended to extend to every aspect of work in progress, but rather are to be limited to spot checking and selective sampling of the work being done by the Contractor. The ENGINEER shall determine, in general, if the work is proceeding in accordance with the Contract Documents, and shall advise the OWNER of his progress as needed. The ENGINEER is not responsible for construction means, methods, techniques, sequences or procedures, time of performance, programs, or for any safety precautions in connection with the construction work. The ENGINEER is not responsible for the Contractor's failure to execute the work in accordance with the Construction Contract.
 - E. Review the Contractor's requests for progressive payments, and based upon said on-site observation, advise the OWNER as to WGK's opinion of the extent of the work completed in accordance with the terms of the Construction Contract as of the date of the Contractor's payment request, and issue for processing by the OWNER, a Certificate for Payment in the amount owed the Contractor. The issuance of Certificates for Payment shall constitute a declaration by WGK to the OWNER, based upon said on-site observations, and review of any data accompanying the request for payment, that the Contractor's work has progressed to the point indicated; that to the best of WGK's knowledge, information and belief, the quality of the Contractor's work is in accordance with the Construction Contract Documents (subject to subsequent correction of minor deviations from the Construction Contract Documents and to qualifications stated in the Certificate for Payment); and that the Contractor is entitled to the amount stated. The issuing of the Certificate for Payment by WGK shall not represent that he has made any investigation to determine the uses made by the Contractor of sums paid to the Contractor.
 - F. The ENGINEER shall review the Contractor's requests for progressive payments in a timely fashion, and shall forward same to the OWNER for approval and payment on a routine basis. The OWNER shall consider the Contractor's payment requests at the next regular meeting of the Board of Supervisors, and issue payments to the Contractor on a timely basis thereafter.
 - G. Make recommendations to the OWNER on all claims relating to the execution and progress of the construction work. The ENGINEER's decisions in matters relating to WGK's design shall be final.
 - H. Notify the OWNER of permanent work which does not conform to the result required in the Construction Contract, prepare a written report describing any apparent non-conforming permanent work and make recommendations to the OWNER for its correction and, at the request of the OWNER, have recommendations implemented by the Contractor.
 - I. Review shop drawings, samples and other submittal of the Contractor, only for general conformance to the design concept of the Project, and for general compliance with the Construction Contract. The ENGINEER shall evaluate and determine the acceptability of substitute or "equal" items proposed for use by the Contractor.
 - J. Prepare and/or issue necessary field orders, clarifications and interpretations of the Contract Documents, as needed, to facilitate the orderly completion of the work in accordance with the design intent.
 - K. Prepare for the OWNER's approval, Change Orders which address minor revisions of or adjustments to the original project scope of work.



- L. Conduct a pre-final review of the construction project upon receipt of the Contractor's notice of substantial completion.
 - M. Conduct a final review of the construction project upon receipt of the Contractor's certification of final completion; receive and review written guarantees and related data assembled by the Contractor; and issue to the OWNER a Certificate of Final Payment.
 - N. The ENGINEER shall not be responsible for the defects or omissions in the work result of the Contractor(s), or any Subcontractor(s), or any of the Contractor's or Subcontractor's employees, or that of any other persons or entities responsible for performing any of the work result as contained in the Construction Contract.
 - O. Submit a written report to the OWNER not less frequently than monthly providing a status report on the general progress of the Project, summarizing the accomplishments to date and highlighting points of concern.
 - P. Conduct a one-year warranty review of the completed construction, and advise OWNER of any defects that may need further attention by the Contractor.
4. **Record Documents Phase Services:** Upon completion of the construction activities, WGK shall prepare "record" drawings of the finished work. Such drawings shall be prepared by WGK upon completion of the project and acceptance by the OWNER, and one set of reproducible "record" drawings shall be provided to the OWNER within thirty (30) days after the final construction review.
5. **Additional Services:** Upon receipt of the written authorization of the OWNER, WGK agrees to furnish or obtain from others, additional professional services related to the Project, as set forth herein below and contained within this Agreement:
- A. Monitoring the performance of the completed improvements and making periodic visits to the facilities to verify the overall operational characteristics.
 - B. Providing a one year performance certificate and letter certifying the completion of one year of successful operation.
 - C. Preparation of applications, engineering reports, technical investigations, maps and exhibits, and other supporting documents for government grants, loans or advances.
 - D. Preparation of drawings from field measurements of existing construction when required for planning additions or alterations thereto.
 - E. Services due to changes in the scope of the Project or its design including, but not limited to, changes in scope, complexity, schedule or character of construction, or services required resulting from significant delays, changes in prices of materials, or equipment and energy shortages.
 - F. Revision of studies, reports, design documents, plans or specifications which have previously been approved by the OWNER, or when such revisions are due to causes beyond the control of WGK.
 - G. Preparation of design documents for alternate bids or for out-of-sequence work requested by the OWNER.
 - H. Preparation of detailed renderings, exhibits or scale models for the Project.
 - I. Provision of special drawings or charts, and other similar materials for use by the OWNER in the operation, maintenance, repair or modification of the completed Project.
 - J. Provision of planning surveys, site evaluations, environmental assessments, and comparative studies of prospective sites.
 - K. Provision of any type of field surveys for construction purposes, detailed "stake out" of the location of the work, property or easement acquisition surveys, and any other special field surveys related to the work, which are not incident to the design of the original scope of work.
 - L. Provision of copies of reports, correspondence, submittal data, contract documents and specifications, and prints of construction plans.
 - M. Investigations involving detailed considerations of operations, maintenance and overhead expenses; the performance value engineering analyses; the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, and valuations; detailed quantity of surveys of material and labor; and material audits or inventories required by the OWNER.
 - N. Additional services when the Project involves more than one Construction Contract, or separate equipment contracts, where only one contract was envisioned originally.
 - O. Preparation of special Change Orders when requested by the OWNER, and/or where not within the original project scope of work.



- P. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) defective or incomplete work of the contractor, (3) prolongation of the initial Construction Contract time beyond the contract time, (4) acceleration of the work schedule involving services beyond established office working hours, and (5) the Contractor's default under Construction Contract due to delinquency or insolvency.
- Q. Provision of additional assistance in the start-up, testing, adjusting or balancing, or operation of equipment or systems, or arranging for training personnel for operation or maintenance of equipment or systems, following the initial sixty (60) day start-up period.
- R. Provision of design services relating to future facilities, systems and equipment which are intended to be constructed or operated as a part of the Project.
- S. Provision of services as an expert witness for the OWNER in connection with litigation or other proceedings involving or relating to the Project.
- T. Provision of property and easement plats and descriptions, and field survey staking to facilitate acquisition.
- U. Provision of additional services required by the acceptance of substitute materials or equipment other than "or equal" items.
- V. Provision of other services not otherwise provided for in this Agreement, including services normally furnished by the OWNER.



This Exhibit C, consisting of 2 pages is referred to in and is hereby considered a part of the Professional Services Agreement effective _____ (effective date) by and between City of Clinton, MS hereafter called OWNER and Williford, Gearhart & Knight, Inc., Engineers & Surveyors (hereafter called WGK) for the provision of professional services described as 2010 NRCS EWP Bank Stabilization Project (Hampstead Blvd./Broadway Street), (hereafter called Project). The engineering fee schedule is described below:

1. **General:** In accordance with the terms and conditions of this Agreement, WGK shall provide professional services for which the OWNER shall compensate WGK as set forth herein below.
2. **Basic Engineering Services:** As defined in Scope of Professional Services attached to the Agreement, with compensation on the basis of lump sum amounts defined herein below.
3. **Design Phase Services:** As defined in Exhibit B - Section 2 on the basis of a lump sum of \$12,885.00 (twelve thousand eight hundred eighty five dollars).
4. **Construction Administration Phase Services:** As defined in Exhibit B - Section 3 on the basis of a lump sum of \$8,500.00 (eight thousand five hundred dollars).
5. **Additional Services:** As defined in Section 5 of the Scope of Professional Services, with compensation on an hourly reimbursable basis plus direct reimbursable expenses as set forth herein below:

Additional professional services shall be provided on an hourly basis in accordance with the hourly billing rates set forth herein below. These hourly rates shall apply to the additional services rendered herein, and shall be adjusted no less than annually following each calendar year.

DESCRIPTION	HOURLY RATE
Principal	\$170
Senior Project Engineer	155
Senior Design Engineer	145
Design Engineer II	125
Project Engineer I	105
Project Engineer II	125
Senior Engineering Assistant	100
Engineer Intern I	85
Engineer Intern II	95
Project Coordinator	85
Designer	80
Graduate Engineer	75
Engineering Assistant	70
Construction Review	70
Project Surveyor	100
Surveyor	80
Surveying Coordinator	70
Technician	65
Survey Party Chief	80
Survey Crewman I	30
Survey Crewman II	35
Technician Assistant	40
Administrative Assistant	50
Robotic Surveying Equipment	25
GPS/RTK Surveying Equipment	50
4 Wheeler (per day)	40
Accounting Manager	75
Accounting Assistant	55



- A. Cost of services of other professional consultants billed to WGK by the professional consultants for such services. These services shall include geotechnical, architectural, structural, mechanical and electrical consultants. These expenses shall be invoiced by WGK to the OWNER at cost.
6. **Reimbursable Expenses:** As defined herein below, shall be reimbursed to WGK at cost.
- A. Reimbursable expenses are in addition to compensation to WGK for Additional Services and include expenditures made by WGK, his employees or his consultants in the interest of the Project. Reimbursable Expenses include, but are not limited to, those listed herein below.
- B. Expense of transportation, mileage, subsistence, rentals and lodging when traveling in connection with the Project.
- C. Expense of long distance or toll telephone calls, telegrams, messenger service, field office expenses and fees paid for securing approval of authorities having jurisdiction over the Project.
- D. Expense of all reproduction, postage and handling of Plans, Specifications, Contract Documents, reports or other Project related work product of WGK.
- E. Expense of computer time including charges for the use or purchase of special hardware or proprietary software programs incident to the Project.
7. **Payments to the Engineer:** Shall be made by the OWNER to WGK as specified herein below.
- A. Progress payments for all parts of this Contract shall be made in proportion to services rendered as indicated within this Agreement, and shall be due and owing within thirty days of WGK's submittal of his monthly statement. Invoices for professional services rendered will be prepared in accordance with WGK's standard practices, and will be submitted to the OWNER by WGK on a monthly basis. Past due amounts owed to WGK shall include an interest charge of one percent compounded monthly from the thirtieth day. Payments received from the OWNER will be credited first to any accrued interest, and then to the principal balance. In the event of a disputed or contested invoice, the OWNER may withhold only that portion in question, and shall render payment for the agreed portion to WGK on a timely basis.
- B. For the **Design Phase Services**, as specified in Exhibit B - Section 2, payments shall be made monthly based on WGK's estimate of the percentage completion of the phase indicated herein below, which shall represent the following percentages of total lump sum compensation specified:
- | | | |
|---------------------------|-------|-------------|
| <u>Final Design Phase</u> | _____ | <u>100%</u> |
| <u>TOTAL OF LUMP SUM</u> | _____ | <u>100%</u> |
- C. For the **Construction Administration Phase Services**, as specified in Exhibit B - Section 3, payments shall be made monthly based on WGK's estimate of the percentage completion of the phase indicated herein below, which shall represent the following percentages of total lump sum compensation specified:
- | | |
|--|-------------|
| <u>Construction Administration Phase</u> | <u>100%</u> |
| <u>TOTAL OF LUMP SUM</u> | <u>100%</u> |
- D. If the **OWNER** fails to make monthly payments due to WGK, WGK may, after giving seven (7) days written notice to the OWNER, suspend services under this Agreement.
- E. No deductions shall be made from WGK's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors.
- F. If the Project is delayed or if WGK's services for the Project are delayed or suspended for more than three months for reasons beyond WGK's control, WGK may, after giving seven (7) days written notice to the OWNER, terminate this Agreement and the OWNER shall compensate WGK in accordance with the termination provision contained hereafter in this Agreement, or WGK shall be entitled to an adjustment of the amounts and rates of compensation specified herein, in addition to consideration for the expenses incurred by WGK in the suspension and/or reactivation of his services.

