

**CITY OF CLINTON
REGULAR MEETING OF THE MAYOR AND BOARD OF ALDERMEN
TUESDAY, JULY 20, 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 Mayor Aultman followed by the pledge of allegiance to the flag led by Alderman Cashion.

ROLL CALL City Clerk, Russell Wall

Present: Tony Hisaw – Alderman Ward 1
 Tony Greer – Alderman Ward 2
 William O Barnett – Alderman Ward 3
 Kathy Peace – Alderwoman Ward 4
 Mike Cashion – Alderman Ward 6

Absent: Jehu Brabham – Alderman-at-Large
 Mike Morgan – Alderman Ward 5

APPROVAL OF CONSENT AGENDA ITEMS A – O

MOTION made by Alderman Hisaw and **SECONDED** by Alderman Greer to approve the Consent Agenda Items A-O. **MOTION CARRIED UNANIMOUSLY**

RECEIVE THE CERTIFICATE OF ATTENDANCE FOR TAMRA MORGAN FOR ATTENDING THE MUNICIPAL CLERKS STATEWIDE SUMMER SEMINAR

Upon presentation by Russell Wall, City Clerk, **MOTION** made by Alderman Greer and **SECONDED** by Alderman Hisaw the board received the Certificate of Attendance for Tamra Morgan for attending the Municipal Clerks Statewide Summer Seminar. **MOTION CARRIED UNANIMOUSLY**

RECEIVE THE CERTIFICATE OF ATTENDANCE FOR ROSE HAGEMAN FOR ATTENDING THE INITIAL APPEARANCE TRAINING SEMINAR HELD ON JUNE 28, 2010 IN BILOXI, MISSISSIPPI

Upon presentation by Russell Wall, City Clerk, **MOTION** made by Alderman Greer and **SECONDED** by Alderman Hisaw the board received the Certificate of Attendance for Rose Hageman for attending the Initial Appearance Training Seminar held on June 28, 2010 in Biloxi, Mississippi. **MOTION CARRIED UNANIMOUSLY**

PRESENTATION OF THE GRANT AWARD BY WASTE MANAGEMENT TO KEEP CLINTON BEAUTIFUL FOR HIGHWAY 80 BEAUTIFICATION PROJECT

Upon presentation by Mike Parker, Director of Public Works, **MOTION** made by Alderman Hisaw and **SECONDED** by Alderwoman Peace the board approved the presentation of the grant award by Waste Management to Keep Clinton Beautiful for Highway 80 Beautification Project. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF THE SUMMARY CHANGE ORDER FOR THE 2009 STREET IMPROVEMENTS PROGRAM

Upon presentation by Richard Broome, City Engineer, **MOTION** made by Alderman Cashion and **SECONDED** by Alderman Barnett the board approved the Summary Change Order for the 2009 Street Improvement Program. The board also approved extending the contract to September 30, 2010. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF A CONTRACT FOR ENGINEERING SERVICES WITH WILLIFORD, GEARHART & KNIGHT, INC. FOR THE CAP LOAN PROJECT

Upon presentation by Richard Broome, City Engineer, **MOTION** made by Alderwoman Peace and **SECONDED** by Alderman Greer the board approved the contract for engineering services with Williford, Gearhart & Knight, Inc. for the CAP loan project. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF A SEWER USER CHARGE ORDINANCE

Upon presentation by Richard Broome, City Engineer, **MOTION** made by Alderman Barnett and **SECONDED** by Alderman Cashion the board approved the Sewer User Charge Ordinance. **MOTION CARRIED UNANIMOUSLY**

APPOINTMENT OF STEVEN D BOONE AS CITY PROSECUTOR

Upon presentation by Rosemary Aultman, Mayor, **MOTION** made by Alderman Hisaw and **SECONDED** by Alderwoman Peace the board approved the appointment of Steven D. Boone as City Prosecutor. **MOTION CARRIED UNANIMOUSLY**

APPOINTMENT OF MICAH B DUTRO AS PUBLIC DEFENDER

Upon presentation by Rosemary Aultman, Mayor, **MOTION** made by Alderwoman Peace and **SECONDED** by Alderman Barnett the board approved the appointment of Micah B Dutro as Public Defender. **MOTION CARRIED UNANIMOUSLY**

ADJOURN 7:22 P.M.

MOTION made by Alderman Cashion and **SECONDED** by Alderwoman Peace to adjourn until the next regular meeting of the Mayor and Board of Aldermen to be held on August 3, 2010 at 7:00 pm. **MOTION CARRIED UNANIMOUSLY**

APPROVED: _____

Rosemary Aultman, Mayor

7.23.10

Date

ATTEST: _____

Russell L. Wall, City Clerk

July 26, 2010

Date





Certificate of Attendance

The Mississippi Municipal Court Clerk's Association
awards this certificate to

Sandra Morgan

For attending the Summer Convention on
June 28-29, 2010
Biloxi, Mississippi

Judy Tyree

Judy Tyree, President
Mississippi Municipal Court Clerk's Association



Certificate of Attendance

The University of Mississippi Law Center
Awards this Certificate to

Rose Hageman

for having attended the
Municipal Court Clerks Convention
Initial Appearance Training

June 28, 2010
conducted by the
Mississippi Judicial College

Linda E. Beasley
Program Manager

[Signature]
Director



Certificate of Attendance

The Mississippi Municipal Court Clerk's Association
awards this certificate to

Rae Hogeman

For attending the Summer Convention on
June 28-29, 2010
Biloxi, Mississippi

Judy Tyree

Judy Tyree, President
Mississippi Municipal Court Clerk's Association

Summary Change Order

Project: 2009 Streets Improvements Program
 Owner: City of Clinton, MS
 Contractor: Adcamp, Inc.

Item	Original Quantity	Item Unit	Unit Price	Add/Delete	Final Quantity	Total Price
S-403-C	5253	tons	64.00	345.88	5598.88	358,328.32
S-301-A	200	tons	64.00	(200)	0	0.00
406-A	21179	yd3	0.60	(313)	20,866	12,519.60
901-S619-A	4.44	mile	410.00	(1.524)	2.856	1,170.96
901-S619-B	1.15	mile	410.00	(0.064)	1.086	445.26
901-S620-C	41,696	feet	0.21	12,998	54,694	11,485.74
901-S620-D	64,795	feet	0.22	15,704	80,499	17,709.78
Speed hump	0	LS	1,250	1	1	1,250
Intersection Rework	0	LS	27,860	1	1	27,860
Lump Sum			Lump Sum			

Final Contract Amount \$430,769.66

Recommended By: _____ Date _____

Contractor's Approval _____ Date _____

Owner's Approval *James D. Quethan* Date 7.23.10

Summary Change Order

Project: 2009 Streets Improvements Program
 Owner: City of Clinton, MS
 Contractor: Adcamp, Inc.

Item	Original Quantity	Item Unit	Unit Price	Add/Delete	Final Quantity	Total Price
5-403-C	5253	ton	64.00	345.88	5598.88	358,328.32
5-301-A	200	ton	64.00	(200)	0	0
406-A	21,179	yd ³	0.60	(313)	20,866	12,519.60
901-5619-A	4,444	mile	410.00	(1,584)	2,860	1,170.96
901-5619-B	1.15	"	410.00	(0.064)	1.086	445.26
901-5620-C	41,696	FEET	0.24	12,998	54,694	11,485.74
901-5620-D	64,795	"	0.22	15,704	80,499	17,709.78
	Lump Sum					

Speedump
infection
Reason

0 15 1250 1 1250
 0 15 27,860 1 27,860
 Final Contract Amount

\$430,769.66

Recommended By: _____ Date _____

Contractor's Approval _____ Date _____

Owner's Approval _____ Date _____



This is an AGREEMENT, effective as of _____ (effective date) by and between **City of Clinton** 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 Cap Loan Improvements**, 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 7 pages.
- ☒ The Compensation Schedule, incorporated herein as Exhibit C, consisting of 3 pages.

The OWNER's official designated representative for this Project shall be: **Rosemary Aultman**. WGK's official designated representative for this Project: shall be: **Greg Gearhart, P. E.** The WGK Project Number shall be: **2010-235-00**.

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

Name: Greg Gearhart, P. E.

ATTEST:

Name: Rosemary Aultman, Mayor

ATTEST:

Name:

Name:

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** (hereafter called **OWNER**) and Williford, Gearhart & Knight, Inc., (hereafter called **WGK**), for the provision of professional services described as **2010 Cap Loan Improvements**, (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 7 pages is referred to in and is hereby considered a part of the Professional Services Agreement effective _____ between **City of Clinton** (hereafter called **OWNER**) and Williford, Gearhart & Knight, Inc., (hereafter called **WGK**), for the provision of professional services described as **2010 Cap Loan Improvements**, (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. **Planning Phase Services:** Upon receipt of the written authorization of the OWNER to proceed with the Planning 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, to discuss the scope of the intended project, and to secure available data.
 - B. Advise the OWNER as to the necessity of providing, or obtaining from others, special services or specific data that will be needed to perform the Services anticipated for this Project.
 - C. Identify, consult with, and analyze the requirements of governmental authorities having jurisdiction to approve the funding, design or construction of the Project.
 - D. Complete the preliminary planning studies related to the intended project, including preparation of base maps, schematic drawings, preliminary layouts of the intended project, preliminary opinions of probable project cost, preliminary engineering reports, and other related documents.
 - E. Assist the Owner in the assembly of grant and loan funding application packages, by the provision of technical information, maps and cost estimates, in accordance with the requirements of the various grant and loan funding programs.
 - F. Meet with the Owner and funding agencies as needed to facilitate preparation of the grant and loan application packages.
 - G. Furnish copies of the work products to the OWNER for review and comment.
 - H. Furnish copies of the work products to governmental regulatory or funding agencies for review and approval.
3. **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. Coordinate the performance of all required subsurface explorations on the project site.
 - K. Contract with a qualified geotechnical sub consultant to complete the subsurface explorations and prepare a geotechnical report for the project, if necessary.
 - L. 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.



- M. Provide with the project documents a sufficiently clear delineation of the labor categories and wage rates that are applicable to the PROJECT, in conformance with all local and State laws on practices, where applicable.
 - N. 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.
 - O. 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.
4. **Pre-construction Phase Services:** Upon receipt of the written approval of the OWNER and appropriate regulatory agencies for the Plans, Specifications, Contract Documents and final Opinion of the Construction Cost, and upon receipt of the written authorization of the OWNER to proceed with the Pre-construction Phase, WGK shall:
- A. Furnish Advertisement for Bids to the OWNER to complete and submit to newspapers, trade journals, contractors, minority groups, subcontractors and suppliers, as appropriate.
 - B. Schedule and conduct a site inspection trip to the project site with prospective bidders, and assist in scheduling and conducting a pre-bid conference, where appropriate.
 - C. Investigate reported omissions and discrepancies in the plans, specifications and contract documents, and formulate and mail addenda as needed.
 - D. Attend and assist in conducting the bid opening with OWNER and Contractors.
 - E. Analyze bids received for irregularities, errors or omissions.
 - F. Review submittal of substitute materials and equipment, and recommend acceptance/rejection to the OWNER.
 - G. Review proof of bidder's qualifications and recommend contract award or rejection to the OWNER.
 - H. Prepare and distribute certified tabulation of bids for project to OWNER, Contractors and other parties as appropriate.
 - I. Prepare a bid package in accordance with the regulatory/funding program requirements, and submit same to the appropriate agencies for review and approval.
 - J. Prepare a Notice-of-Award and assist in securing its execution by successful Contractor.
 - K. Collect proofs of publication, and assist in securing approval of award and procurement procedures, where applicable.
 - L. Prepare contract documents for signature by Contractor and assist the OWNER in securing their execution, and prepare Notice-to-Proceed to Contractor for PROJECT.
 - M. Prepare and distribute contract price estimate breakdown to OWNER and Contractor, as appropriate.
 - N. Assist in scheduling and conducting a pre-construction conference with OWNER, Contractor, utility companies, regulatory agencies, and other parties as appropriate.
 - O. Provide the OWNER copies of the plans, specifications, and contract documents as requested.
 - P. Furnish additional copies of the plans, specifications, and contract documents as requested by prospective bidders, material suppliers, and other interested parties, to facilitate bidding and contracting of the PROJECT.
 - Q. Furnish to the CONTRACTOR additional copies of the plans, specifications, and contract documents for execution after contract award, and for use during construction phase as needed.
5. **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.
6. **Construction Review Phase Services:** Upon initiation of the construction activities, if and where applicable, WGK shall:
- A. Provide one or more "full time" Construction Review Representatives to assist WGK in order to render more extensive representation at the Project site during the Construction Phase. The construction review representative shall monitor the Contractor's activities, and shall prepare daily reports providing details regarding the weather conditions,



- site of the work in progress, soil conditions, personnel on-site, equipment in use, materials incorporated into the project, stored materials on the site, visitors to the site, problems encountered and remedies employed, and other pertinent information.
- B. The purpose of the construction review representative at the site shall be to enable WGK to better perform his duties during the construction activities. The purpose shall also be to provide the OWNER a greater degree of confidence that the work in progress and/or completed by the Contractor will conform to the intent of the Contract Documents, such that the integrity of the design concept is preserved by the Contractor, and that the work functions as a whole as planned when completed. The ENGINEER and his representatives shall not, however, supervise, direct or have direct control over the Contractor's work.
 - C. The limits of the authority, duties and responsibilities of a Construction Review Representative shall be described before such services begin by written instruments referenced herein as EJCDC publication No. 1910-1-A, and made a part of this Agreement by reference. By means of the more extensive on-site observations of the work in progress, WGK will endeavor to provide further protection for the OWNER against defects and deficiencies in the Contractor's work, but the furnishing of such services shall not include construction review of the Contractor's construction means, methods, techniques, sequences or procedures, or of any safety precautions and programs in connection with the work, and WGK shall not be responsible for the Contractor's failure to carry out the work in accordance with the Construction Contract.
 - D. The construction review representative will review all Contractor's requests for progressive payments, and all claims for materials stored on the site, and shall assist WGK in verifying the accuracy and completeness of all claims for payment.
 - E. ENGINEER shall determine the appropriate times for the Construction Review Representative to be present on the PROJECT site to provide for such review.
7. **Resident Project Representation Services:** Upon initiation of the construction activities, if and where applicable:
- A. The ENGINEER shall furnish a Resident Project Representative (RPR), assistants, and other field staff to assist WGK in inspecting performance of the work of the CONTRACTOR. Through more extensive on-site inspections of the work in progress and field checks of materials and equipment by the RPR and assistants, WGK shall endeavor to provide further protection for the OWNER against defects and deficiencies in the work; but, the furnishing of such services will not make WGK responsible for or guarantee the CONTRACTOR'S performance, nor assume any duty to supervise construction and safety procedures followed by the CONTRACTOR or subcontractors. The duties and responsibilities of the RPR are limited to those of WGK in WGK'S agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:
 - B. General: The RPR is WGK'S agent at the site, will act as directed by and under the supervision of WGK, and will confer with WGK regarding RPR's actions. The RPR's dealings in matters pertaining to the on-site work shall in general be with WGK and CONTRACTOR, keeping the OWNER advised as necessary. The RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of the CONTRACTOR. The RPR shall generally communicate with the OWNER, with the knowledge of and under the direction of, WGK.
 - C. Duties and Responsibilities of the RPR:
 - 1. Schedules: Review progress schedule of Shop Drawing submittals and schedule of values prepared by the CONTRACTOR and consult with WGK concerning acceptability.
 - 2. Conferences and Meetings: Attend meetings with the CONTRACTOR, such as pre-construction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 - 3. Liaison:
 - a. Serve as WGK'S liaison with the CONTRACTOR, working principally through the CONTRACTOR'S superintendent, and assist in understanding the intent of the Contract Documents, and assist WGK in serving as the OWNER'S liaison with the CONTRACTOR when the CONTRACTOR'S operations affect the LPA's on-site operations.
 - b. Assist in obtaining from the OWNER additional details or information, when required for proper execution of the work.
 - 4. Shop Drawings and Samples:
 - a. Record the date of receipt of Shop Drawings and samples.
 - b. Take samples and receive samples which are furnished at the site by the CONTRACTOR, and notify WGK of availability of samples for examination.



- c. Advise WGK and the CONTRACTOR of the commencement of any work requiring a Shop Drawing or sample if the submittal has not been approved by WGK.
5. Review of Work, Rejection of Defective Work, Inspections, and Tests:
 - a. Conduct on-site observations of the work in progress to assist WGK in determining if the work is, in general, proceeding in accordance with the Contract Documents.
 - b. Report to WGK whenever the RPR believes that any work is unsatisfactory, faulty, or defective, or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test, or approval required to be made; and, advise WGK of work that the RPR believes should be corrected or rejected, should be uncovered for observation, or requires special testing, inspection, or approval.
 - c. Verify that tests, equipment, system startups, and operating and maintenance training are conducted in the presence of appropriate personnel, and that the CONTRACTOR maintains adequate records thereof and observe, record, and report to ENGINEER appropriate details relative to the test procedures and startups.
 - d. Accompany visiting inspectors representing the public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to WGK.
6. Interpretation of Contract Documents: Report to WGK when clarifications and interpretation of the Contract Documents are needed and transmit to the CONTRACTOR clarifications and interpretations as issued by WGK.
7. Modifications: Consider and evaluate the CONTRACTOR'S suggestions for Modifications in Drawings or Specifications and report with the RPR's recommendations to WGK. Transmit to the CONTRACTOR decisions as issued by WGK.
8. Records:
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER'S clarification and interpretations of the Contract Documents, progress reports, and other Project related documents.
 - b. Keep a diary signed daily, recording the CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders, or changed conditions, list of job site visitors, daily activities of the prime contractors and all subcontractors, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures, and send copies to WGK.
 - c. Record names, addresses, and telephone numbers of all CONTRACTORS, subcontractors, and major suppliers of materials and equipment.
9. Reports:
 - a. Furnish WGK periodic reports as required of progress of the work and of the CONTRACTOR'S compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
 - b. Consult with WGK in advance of scheduled major tests, inspections, or start of important phases of the work.
 - c. Draft proposed Supplemental Agreements Quantity Adjustments and Work Directive Changes, obtaining backup material from the CONTRACTOR; and recommend Supplemental Agreements, Quantity Adjustments, Work Directive Changes, and Field Orders to WGK.
 - d. Report immediately to WGK and to the LPA upon the occurrence of any accident.
10. Payment Requests: Review applications for payment with the CONTRACTOR for compliance with the established procedure for their submission and forward with the RPR's recommendations to WGK, noting particularly the relationship of the payment requested to the schedule of values and work completed and materials and equipment delivered to the site but not incorporated in the work.
11. Certificates, Maintenance, and Operation Manuals: During the course of the work, verify that certificates, maintenance, and operations manuals and other data required to be assembled and furnished by the CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to WGK for review and forwarding to the LPA prior to final payment for the work.
12. Completion:
 - a. Before WGK issues a Certificate of Substantial Completion, submit a list of observed items requiring



- completion or correction to the Contractor.
- b. Conduct a final inspection in the company of WGK, the LPA, the CONTRACTOR, the MDOT, & FHWA, and prepare a final list of items to be completed or corrected.
 - c. Observe that all items on the final list have been completed or corrected and make recommendations to WGK concerning acceptance.
- D. Limitations of Authority - The Resident Project Representative:
1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by WGK.
 2. Shall not exceed the limitations of WGK'S authority as set forth in the Contract Documents.
 3. Shall not undertake any of the responsibilities of the CONTRACTOR, subcontractors, or the CONTRACTOR'S superintendent.
 4. Shall not advise on, issue directions relative to, or assume control over, any aspect of the means, method, techniques, sequences, or procedures of construction, unless such advice or directions are specifically required by the Contract Documents.
 5. Shall not advise on, issue directions regarding, or assume control over, safety precautions and programs in connection with the work.
 6. Shall not accept Shop Drawing or sample submittals from anyone other than the CONTRACTOR.
 7. Shall not authorize the LPA to occupy the Project in whole or in part.
 8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.
8. **O & M Manual Phase Services:** Not applicable to this contract.
9. **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.
10. **Facilities Start-Up Phase Services:** Upon completion of the construction activities, if and where applicable, WGK shall be available for ten (10) days of Project start-up including:
- A. Assistance to the OWNER and his representatives, employees and operators regarding the operation and maintenance of the completed facilities, and consultation regarding the design concept and performance standards for the completed facilities.
 - B. Service to the OWNER and his agents in an advisory and consulting capacity to aid in successful initial and continued operation of the completed facilities.
11. **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 3 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 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 Cap Loan Improvements**, (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. **Planning Phase Services:** As defined in Section 2 on the basis of a lump sum of (N/A).
4. **Design Phase Services:** As defined in Section 3 on the basis of a lump sum of **Fifteen thousand, six hundred dollars (\$15,600.00)**.
5. **Construction Administration Phase Services:** As defined in Sections 4, 5, 6, 7, 8, & 9 on the basis of a lump sum of **Thirty-six thousand, five hundred dollars (\$36,500.00)**. (This is in addition to the balance of \$9,500.00 in project 2005-205-00.).
6. **Additional Services:** As defined in Section 11 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.
7. **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.
8. **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 **Planning Phase Services**, as specified in 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:
- | | |
|--------------------------|------------|
| Planning Phase | N/A |
| TOTAL OF LUMP SUM | N/A |
- C. For the **Final Design Phase Services**, as specified in 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:
- | | |
|--------------------------|-------------|
| Final Design Phase | 100% |
| TOTAL OF LUMP SUM | 100% |
- D. For the **Construction Administration Phase Services**, as specified in Sections 4, 5, 6, 7, 8, & 9, 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:
- | | |
|-----------------------------------|-------------|
| Construction Administration Phase | 30% |
| Construction Review Phase | 70% |
| TOTAL OF LUMP SUM | 100% |
- E. 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.
- F. No deductions shall be made from WGK's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors.



- G. 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.

CITY OF CLINTON

SEWER USER CHARGE SYSTEM

The following information shall be used to calculate the required sewer user charge rates to ensure sufficient revenue is available to pay all OM&R costs and any debt retirement (including any Water Pollution Control Revolving Fund Loans). The Mayor and Board of Aldermen shall review this information not less than once each year and revise the Service Fee System (Sewer User Charge Rates) as needed.

Total Estimated Annual Operation, Maintenance and Replacement (OM & R) Costs

Annual OM&R

Labor	\$ 1,711,567
Utilities	\$ 548,683
Materials	\$ 677,000
Outside Services	\$ 979,756
Equipment Replacement	\$ 132,215
Total Estimated OM & R Costs:	\$ 4,049,221

Total Debt Service Costs

Existing Debt Service	\$ 1,681,527
Proposed WPCRLF Loan	\$ 112,661
Total Debt Service (Per Year):	\$ 1,794,188

Total Estimated Costs

Total Estimated OM & R Costs:	\$ 4,049,221
Total Debt Service (Per Year):	\$ 1,794,188

Total Estimated Annual Costs:	\$ 5,843,409
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Total Estimated Annual Revenue

Estimated Revenue from User Charges:

<u>Increment (gal/month)</u>	<u>Users (number)</u>	<u>Avg Usage (gal/month)</u>	<u>Avg Bill (dollars)</u>	<u>Revenue (dollars)</u>	
Water - Inside City					
0 - 2,244	1,708	910	\$9.76	\$16,670	
2,245 -14,960	6,828	6,049	\$19.72	\$134,624	
14,961 - 74,800	315	25,570	\$68.66	\$21,628	
74,801 - 5,610,000	80	294,114	\$673.33	\$53,866	
5,610,001 and up	1	7,480,072	\$13,014.65	\$13,015	
Sub Total	8,932			\$239,804	monthly
Sewer - Inside City					
0 - 2,244	1,550	941	\$9.76	\$15,128	
2,245 -14,960	6,233	6,012	\$18.86	\$117,549	
14,961 - 74,800	254	25,250	\$67.82	\$17,226	
74,801 - up	65	347,093	\$988.90	\$64,279	
Sub Total	8,102			\$214,182	monthly
Water - Outside City					
0 - 2,244	0	0	\$-	\$-	
2,245 -14,960	1	7,782	\$36.71	\$37	
14,961 - 74,800	0	0	\$-	\$-	
74,801 - up	0	0	\$-	\$-	
Sub Total	1			\$37	monthly
Sewer - Outside City					
0 - 2,244	0	0	\$-	\$-	
2,245 -14,960	0	0	\$-	\$-	
14,961 - 74,800	0	0	\$-	\$-	
74,801 - up	1	106,524	\$3,175.47	\$3,175	
Sub Total	1			\$3,175	monthly
Total				\$457,198	monthly

Total User Charges (Revenue Monthly Total x 12)	\$ <u>5,486,375</u>
Connection Fees	\$ <u>96,000</u>
Other Revenue (late fees, interest)	\$ <u>369,000</u>

TOTAL REVENUE	\$ <u>5,951,375</u>
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TOTAL ANNUAL ESTIMATED REVENUE LESS COSTS:

Total Estimated Revenue	\$ <u>5,951,375</u>
Total Estimated Costs	\$ <u>5,843,409</u>

TOTAL:	\$ <u>107,966</u>
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City of Clinton
Water and Sewer Rates
Effective November 1, 2008

WATER INSIDE CITY

Consumption		Rates per	
Cubic feet	Gallons	Cubic foot	Gallon
0 - 300	0 - 2,244	\$9.76	\$9.76
301 - 2,000	2,245 - 14,960	0.019577	0.002617
2,001 - 10,000	14,961 - 74,800	0.018071	0.002415
10,001 - 750,000	74,801 - 5,610,000	0.016565	0.002215
750,001 - up	5,610,001 - up	0.002259	0.000303

SEWER INSIDE CITY

Consumption		Rates per	
Cubic feet	Gallons	Cubic foot	Gallon
0 - 300	0 - 2,244	\$9.76	\$9.76
301 - 2,000	2,245 - 14,960	0.018071	0.002415
2,001 - 10,000	14,961 - 74,800	0.019878	0.002658
10,001 - up	74,801 - up	0.021685	0.002899

City of Clinton
Water and Sewer Rates
Effective November 1, 2008

WATER OUTSIDE CITY

Consumption		Rates per	
Cubic feet	Gallons	Cubic foot	Gallon
0 - 300	0 - 2,244	\$14.64	\$14.64
301 - 2,000	2,245 - 14,960	0.029817	0.003986
2,001 - 10,000	14,961 - 74,800	0.027106	0.003623
10,001 - up	74,801 - up	0.024396	0.003262

SEWER OUTSIDE CITY

Consumption		Rates per	
Cubic feet	Gallons	Cubic foot	Gallon
0 - 300	0 - 2,244	\$14.64	\$14.64
301 - 2,000	2,245 - 14,960	0.027106	0.003623
2,001 - 10,000	14,961 - 74,800	0.029817	0.003986
10,001 - up	74,801 - up	0.032528	0.004349



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

September 1, 2009

Honorable Rosemary Aultman, Mayor
City of Clinton
P.O. Box 156
Clinton, Mississippi 39060

Dear Mayor Aultman:

Re: City of Clinton
Wastewater Treatment Facility Improvement
Draft User Charge System/Ordinance Approval
SRF-C280805-04

In accordance with the Water Pollution Control Revolving Loan Fund (WPCRLF) Program Regulations, the draft User Charge System/Ordinance is approved. An approved copy of the draft User Charge System/Ordinance is enclosed for your records. Please note that Article X, "Project Specific Loan Conditions" of your WPCRLF Loan Agreement will require that the User Charge System/Ordinance be enacted and proof of enactment be submitted by 90% of construction completion.

The applicant/loan recipient is responsible for compliance with all applicable state and federal laws and regulations, and for the proper planning, design, construction, operation, maintenance, replacement, performance, and fiscal integrity of the project. The Department's approval of any document does not relieve the applicant/loan recipient or any others of any liabilities or responsibilities. Department review and/or approval of any document is for loan eligibility/allowability purposes and does not establish or convey any such liability or responsibility.

If I can be of any further assistance, please do not hesitate to contact me at 601-961-5206.

Sincerely,

Bradley Futch
Construction Branch

Enclosure

cc: Mr. Greg Gearhart, P.E., D.E.E., Williford, Gearhart, & Knight, Inc. (w/enclosure)

Williford, Gearhart & Knight, Inc.

SEP 03 2009

Clinton, MS

APPROVED AS PER LETTER

Dated 09-01-09

Initial BE

Dept. of Env. Quality
State of Mississippi

AN ORDINANCE TO PROVIDE FOR THE COLLECTION OF USER CHARGES AND INDUSTRIAL WASTE SURCHARGES FROM USERS OF THE PUBLIC SEWAGE WORKS AND RELATED MATTERS.

BE IT ORDAINED BY THE CITY OF CLINTON, COUNTY OF HINDS, STATE OF MISSISSIPPI AS FOLLOWS:

ARTICLE I

DEFINITIONS

Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:

- Section 1 "Person" shall mean any individual, firm, company, association, society, corporation, or group.
- Section 2 "Sewage" shall mean a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and stormwaters as may be present.
- Section 3 "Sewage Works" shall mean all facilities for collecting, transporting, pumping, treating, and disposing of sewage.
- Section 4 "Sewer" shall mean a pipe or conduit for carrying sewage.
- Section 5 "Shall" is mandatory; "May" is permissive.
- Section 6 "Superintendent" shall mean the Director of Public Works of the City of Clinton or his authorized deputy, agent, or representative.
- Section 7 "City" shall mean the City of Clinton, Mississippi, or, when appropriate to the context, its duly authorized representative.

ARTICLE II

SEWER USER CHARGE SYSTEM

- Section 1 The approved Sewer User Charge System, included herein by reference shall include an itemized budget reflecting the costs of operation and maintenance (including replacement) of the public sewage works and retirement of existing debt including repayment of any Water Pollution Control Revolving Fund Loans. It shall also include the revenues dedicated to these costs and demonstrate that they are adequate based on the use of the system and the Sewer User Charge Rates in Article III.
- Section 2 The Superintendent of the sewage works shall review the Sewer User Charge System periodically, and the Town/City shall revise the Sewer User Charge System and/or Rates, if necessary, to generate sufficient revenue to pay the total costs necessary for the proper operation and maintenance (including replacement) of the sewage works and retirement of debt including the repayment of any Water Pollution Control Revolving Fund Loans.

ARTICLE III

SEWER USER CHARGE RATES

- Section 1 Sewer user charge rates shall be levied on all users including, but not limited to, persons, firms, corporations or governmental entities that discharge, cause or permit the discharge of sewage into the public sewage works.
- Section 2 The attached Water & Sewer Rates, incorporated into this Ordinance by reference, shall apply to each user of the sewage works.

ARTICLE IV
AMENDMENTS

This Ordinance shall be amended, as necessary, to comply with Federal or State Regulations.

ARTICLE V

VALIDITY

Section 1 All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 2 The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

The above Ordinance was first reduced to writing and read and considered by Sections at the regular _____, public meeting of the Mayor and Board of Alderman and on motion duly made for the adoption of said Ordinance and seconded, a vote was taken as follows:

Alderman A voted _____
Alderman B voted _____
Alderman C voted _____
Alderman D voted _____
Alderman E voted _____

Thereupon the Mayor declared the Ordinance duly adopted this the _____ day of _____, _____, and declared same to be full force and effect according to law.

ARTICLE VI

ORDINANCE IN FORCE

Section 1 This ordinance shall be in full force and effect from and after its passage, approval, recording, and publications as provided by law.

Section 2 I, _____, City Clerk and official custodian of the records of The Board of Mayor and Alderman of the City of Clinton, do hereby certify that the foregoing User Charge Ordinance was passed and adopted at a regular meeting of said Board and is further a matter of record in Minute Book NO. _____ at Page No. _____.

CITY OF CLINTON

SEWER USER CHARGE SYSTEM

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Total Estimated Costs	\$ <u>5,843,409</u>

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