

**CITY OF CLINTON
REGULAR MEETING OF THE MAYOR AND BOARD OF ALDERMEN
TUESDAY, FEBRUARY 19, 2002 – 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 Lott followed by the Pledge of Allegiance to the Flag led by Alderman Brabham.

ROLL CALL - City Clerk Wayne Derrick

Present: Jehu Brabham - Alderman-At-Large
 Tony Hisaw – Alderman Ward 1
 Tony Greer - Alderman Ward 2
 Clint Brantley - Alderman Ward 3
 Phil Fisher - Alderman Ward 4
 Herb Touchton – Alderman Ward 5
 Sharbert Lott – Alderman Ward 6
 Ken Dreher – City Attorney

APPROVAL OF AGENDA ITEMS A-Q

MOTION made by Alderman Greer and **SECONDED** by Alderman Lott to approve Consent Agenda Items A-Q. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF DONATION OF A 1 ¾ TON HEAVY RESCUE VEHICLE TO THE CLINTON FIRE DEPARTMENT BY AMR

As a result of the inspection conducted by Mayor Aultman and Fire Chief Darrell McQuirter, **MOTION** made by Alderman Brabham and **SECONDED** by Alderman Greer to approve the acceptance of a 1989 F600 Series 1 ¾ ton heavy rescue truck with 86,000 miles donated to the City of Clinton by AMR. This truck will be used as a backup/heavy rescue unit within the Fire Department. **MOTION CARRIED UNANIMOUSLY**

FINAL PLAT APPROVAL FOR CLINTON BUSINESS PARK

This item was removed and will be considered at a later date.

FINAL PLAT APPROVAL FOR KIRKWOOD, PART 3A

Upon recommendation by Richard Broome, City Engineer, **MOTION** made by Alderman Touchton and **SECONDED** by Alderman Brabham to approve the Final Plat of Kirkwood, Part 3A. A copy of the Final Plat is on file at the Public Works Department. **MOTION CARRIED UNANIMOUSLY**

ENGINEERING CONTRACT WITH WILLIFORD, GEARHART & KNIGHT, INC. FOR SOUTHSIDE WATER IMPROVEMENTS OF 1 MILLION GALLON STORAGE TANK AND NEW WELL

Upon recommendation by Richard Broome, City Engineer, **MOTION** made by Alderman Brantley and **SECONDED** by Alderman Lott to authorize the Mayor to enter into an engineering contract with Williford, Gearhart & Knight, Inc. for Southside Water Improvements of a 1 million gallon storage tank and new well. Total contract for engineering services is estimated to be \$266,900. **MOTION CARRIED UNANIMOUSLY**

ADJOURN 7:29.M.

MOTION made by Alderman Brabham and **SECONDED** by Alderman Greer to adjourn.
MOTION CARRIED UNANIMOUSLY

APPROVED

Rosemary G. Aultman
Rosemary G. Aultman, Mayor

February 28, 2002
Date

ATTEST:

W. Derrick
Wayne Derrick, City Clerk

02/28/2002
Date

SEAL:



BOARD APPROVED

CITY OF CLINTON AGENDA ITEM FACT SHEET

BOARD MEETING DATE: 2/19/02

AGENDA ITEM NO. 7

CONSENT AGENDA : \$	TO:
FOR:	
Circle : Low Quote, Sole Source, Emergency, etc. if applicable. ACCT. NO.	

DISCUSSION/ACTION:	Donation	86,000 miles	1989 model F600 series
Acceptance of 1 3/4 ton truck from AMR to the City of Clinton. To be used as a back up/ heavy rescue unit, within the fire department.			
INTRODUCED BY:	<i>Chief Darrel McQuirter</i>	TELEPHONE:	925-1010
CHIEF DARREL MCQUIRTER			

EXHIBITS FOR REVIEW:

Minutes	_____	Invoice	_____	Other	_____
Ordinance	_____	Plans, Maps	_____		_____
Resolution	_____	Contract	_____		_____

RECOMMENDATION: _____

BOARD ACTION: _____

MOTION MADE BY: *Brabham*

SECONDED BY: *Greer*

<u>VOTE CAST:</u>	<u>"AYE"</u>	<u>"NAY"</u>	<u>ACTION TAKEN:</u>
Brabham	_____	_____	_____
Hisaw	_____	_____	_____
Greer	_____	_____	_____
Brantley	_____	_____	_____
Fisher	_____	_____	_____
Touchton	_____	_____	_____
Lott	_____	_____	_____
Mayor Aultman	_____	_____	_____

AGENDA ITEMS MUST BE TURNED IN TO THE CITY CLERK WITH ALL ATTACHMENTS NO LATER THAN 5 P.M. ON THE WEDNESDAY PRECEDING THE TUESDAY BOARD MEETING TO BE INCLUDED ON THE AGENDA. THIS DEADLINE WILL BE STRICTLY ENFORCED.



CLINTON FIRE DEPARTMENT

Darrel McQuirter, Fire Chief



BOARD APPROVED

February 4, 2002

Proposed donation from American Medical Response (AMR)

City of Clinton, Fire Department.
1990 1 3/4Ton, Ford Truck
Mileage 86,000,
Excellent condition,
All maintenance records available.



Proposed use:

Heavy rescue unit to assist with special operations.
Serve as a backup unit to current rescue truck when it is out of service due to maintenance or repairs

Anticipated expenses:

\$6,500.00 Paint and install radios/equipment.

CITY OF CLINTON AGENDA ITEM FACT SHEET

Board Meeting Date: February 19, 2002

Agenda Item No. 8

Consent Agenda:
For:

To:

Account No.

Discussion/Action: Final Plat Approval for Clinton Business Park

Introduced by: City Engineer Richard Broome

Telephone No. 924-5462

Exhibits for Review:

Minutes: _____
Ordinance: _____
Resolution: _____

Invoice: _____
Plans, Maps: _____
Contract: _____

Other: _____

*Removed - to be
considered at a
later date*

Recommendation:

Board Action:

Motion made by: _____
Seconded by: _____

Vote Cast:

"Aye":

"Nay":

Action Taken:

Brabham
Hisaw
Greer
Brantley
Fisher
Touchton
Lott

Mayor Aultman

Agenda items must be turned in to the City Clerk with all attachments no later than 5 PM on the Wednesday preceding the Tuesday Board Meeting to be included on the Agenda. This deadline will be strictly enforced.

BOARD APPROVED

CITY OF CLINTON AGENDA ITEM FACT SHEET

Board Meeting Date: February 19, 2002

Agenda Item No. 9

Consent Agenda:
For:

To:

Account No.

Discussion/Action: Final Plat Approval for Kirkwood, Part 3A

Introduced by: City Engineer Richard Broome

Telephone No. 924-5462

Exhibits for Review:

Minutes: _____
Ordinance: _____
Resolution: _____

Invoice: _____
Plans, Maps: _____
Contract: _____

Other: _____

Recommendation:

Board Action:

Motion made by: _____

Seconded by: _____

Touchton
Brabham

Vote Cast:

"Aye":

"Nay":

Action Taken:

Brabham
Hisaw
Greer
Brantley
Fisher
Touchton
Lott

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Mayor Aultman

Agenda items must be turned in to the City Clerk with all attachments no later than 5 PM on the Wednesday preceding the Tuesday Board Meeting to be included on the Agenda. This deadline will be strictly enforced.

BOARD APPROVED

CITY OF CLINTON AGENDA ITEM FACT SHEET

Board Meeting Date: February 19, 2002

Agenda Item No. 10

Consent Agenda: For:	To: Account No.
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Discussion/Action: Engineering contract with Williford, Gearhart & Knight for Southside Water Improvement's (1 million gallon storage tank and new well)

Introduced by: City Engineer Richard Broome

Telephone No. 924-5462

Exhibits for Review:

Minutes: _____
Ordinance: _____
Resolution: _____

Invoice: _____
Plans, Maps: _____
Contract: X

Other: _____

*total contract for
engineering is estimated
to be \$266,900*

Recommendation:

Board Action:

Motion made by: _____

Seconded by: _____

*Brantley
Lott*

Vote Cast:

"Aye":

"Nay":

Action Taken:

Brabham
Hisaw
Greer
Brantley
Fisher
Touchton
Lott

(vertical line through all boxes)

Mayor Aultman

Agenda items must be turned in to the City Clerk with all attachments no later than 5 PM on the Wednesday preceding the Tuesday Board Meeting to be included on the Agenda. This deadline will be strictly enforced.

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN THE
CITY OF CLINTON
AND
WILLIFORD, GEARHART & KNIGHT, INC.**

THIS IS AN AGREEMENT made this the ____ day of _____, 2001, by and between the City of Clinton, P.O. Box 156, Clinton, Mississippi 39060-0156, (OWNER) and Williford, Gearhart & Knight, Inc., Engineers & Surveyors, Post Office Box 318, Clinton, MS 39060 (ENGINEER). Gregory A. Gearhart, P.E., Mississippi Registration Number 8730, will bear the primary responsibility for the professional services rendered under this agreement.

This Agreement is hereby established to provide the basis for provision of certain professional services on that certain project described as 2001 State Revolving Funds (SRF) Water Improvements; said project includes approximately 6,000 linear feet of water main, a 1,000,000 gallon elevated water tank, an approximate 1,000 gallons per minute water well with up to 2 test wells, and a SCADA system that is compatible with the existing sewer SCADA and will monitor the new facilities as well as the existing wells and tanks; said improvements having a current total probable construction cost of approximately \$2,180,760; as referred to herein as the PROJECT. The ENGINEER shall maintain all records, plans, specifications and other documents produced under this contract for a minimum of three (3) years after PROJECT close out.

It is anticipated that the Project will be constructed under as many as four (4) separate construction contracts, with all contracts approximately concurrent during a ten (10) month construction period.

The Project will be financed primarily by funds derived from the State Revolving Funds (SRF) Program, administrated by the Mississippi Department of Environmental Quality, Office of Pollution Control. All the professional services provided incident to this contract shall conform to the requirements of the SRF program. Further, the Department of Health (DOH) and/or EPA and their representatives shall have access to and the right to audit, inspect, copy and examine all books, financial records, and other documents relating directly to the receipt and disbursement of the SRF program funds.

The OWNER hereby employs the ENGINEER to perform the professional services described herein, the ENGINEER agrees to provide the professional services prescribed herein, and the OWNER agrees to compensate the ENGINEER for the services rendered under this Agreement.

SECTION 1 - ENGINEER'S RESPONSIBILITIES

1.0 DESCRIBED SERVICES: The ENGINEER 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 design and construction phases of the PROJECT, as described in detail as follows:

- 1.1 **FACILITIES PLANNING SERVICES:** ENGINEER shall utilize the approved Facilities Plan as the basis of design for all improvements.
- 1.2 **PRELIMINARY DESIGN PHASE SERVICES:** Upon receipt of the written authorization of the OWNER to proceed with the Design Phase, the ENGINEER shall provide the following types of service:
 - 1.2.1 **Basic Preliminary Design Services:** 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.
 - 1.2.1.1 Perform preliminary design of the water mains, tank, water well and SCADA system.
 - 1.2.1.2 Perform preliminary plan design drawings for the water mains, tank and water well.
 - 1.2.1.3 Identify potential well/tank sites and estimate acreage of property to be acquired.
- 1.3 **FINAL DESIGN PHASE SERVICES:** Following approval of the Preliminary Engineering Report and associated estimate of probable construction cost, commence Final Design Phase Services as follows:
 - 1.3.1 **Basic Final Design Phase Services:** Perform the detailed design for the Project in accordance with the design alternative selected by the OWNER.
 - 1.3.1.1 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.
 - 1.3.1.2 Prepare a final Opinion of Probable Construction Cost based on the final design.
 - 1.3.1.3 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.
 - 1.3.1.4 Provide deductive alternates, where feasible, so that should the lowest responsive bid for construction of the project exceed the funds available, deductive alternatives can be taken to reduce the bid amount and allow budget flexibility.

- 1.3.1.5 Provide design of facilities to be used by the public such that access shall be available to the handicapped.
- 1.3.1.6 Prepare documents that include forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond.
- 1.3.1.7 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.
- 1.3.1.8 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.
- 1.3.1.9 Advise the OWNER regarding the need for other special services or consultants that may be needed by the ENGINEER to fulfill the requirements identified by the OWNER.
- 1.3.1.10 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.
- 1.3.1.11 Prepare highway permits and exhibits for the water mains if required.
- 1.3.2 **Right-of-Way Services:** Provide field surveys and plats and legal descriptions of property for the tank site, where required. Provide exhibits depicting the required easements for water mains to the City attorney for preparation of easements. If a separate Water well site is required, those services will be provided under Additional Services.
- 1.4 **PRECONSTRUCTION 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 Preconstruction Phase, the ENGINEER shall:
 - 1.4.1 Furnish Advertisement for Bids to the Owner to forward to newspapers, trade journals, contractors, minority groups, subcontractors and suppliers, as appropriate.
 - 1.4.2 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.

- 1.4.3 Investigate reported omissions and discrepancies in the plans, specifications and contract documents, and formulate and mail addenda as needed.
- 1.4.4 Attend and assist in conducting the bid opening with OWNER and Contractors.
- 1.4.5 Analyze bids received for irregularities, errors or omissions.
- 1.4.6 Review submittal of substitute materials and equipment, and recommend acceptance/rejection to the OWNER.
- 1.4.7 Review proof of bidder's qualifications and recommend contract award or rejection to the OWNER.
- 1.4.8 Prepare and distribute certified tabulation of bids for project to OWNER, Contractors and other parties as appropriate.
- 1.4.9 Prepare a bid package in accordance with the regulatory/funding program requirements, and submit same to the appropriate agencies for review and approval.
- 1.4.10 Prepare a Notice-of-Award and assist in securing its execution by successful Contractor.
- 1.4.11 Collect proofs of publication, and assist in securing approval of award and procurement procedures, where applicable.
- 1.4.12 Prepare contract documents for signature by Contractor and assist the OWNER in securing their execution, and prepare Notice-to-Proceed to Contractor for PROJECT.
- 1.4.13 Prepare and distribute contract price estimate breakdown to OWNER and Contractor, as appropriate.
- 1.4.14 Assist in scheduling and conducting a pre-construction conference with OWNER, Contractor, utility companies, regulatory agencies, and other parties as appropriate.
- 1.4.15 Provide the OWNER two copies of the plans, specifications, and contract documents.
- 1.4.16 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. Cost of plans to bidders shall

be as specified in the Advertisement for Bids.

- 1.4.17 Furnish to the CONTRACTOR six additional copies of the plans, specifications, and contract documents for execution after contract award, and for use during construction phase.
- 1.5 **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 the ENGINEER, and upon receipt of the written authorization of the OWNER to proceed with the construction activities, the ENGINEER shall:
 - 1.5.1 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.
 - 1.5.2 Advise and consult with the OWNER during the construction activities, and assist the OWNER in the issuance of appropriate instructions to the Contractor.
 - 1.5.3 Establish any additional appropriate survey bench marks and survey control points in close proximity to the PROJECT for use by the Contractor in laying out the work.
 - 1.5.4 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.
 - 1.5.5 Review the Contractor's requests for progressive payments, and based upon said on-site observation, advise the OWNER as to the ENGINEER'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 the ENGINEER 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 the ENGINEER'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 the ENGINEER shall not represent that he has made any investigation to determine the uses made by the Contractor of sums paid to the Contractor.

- 1.5.6 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 Mayor and Board of Alderman, and issue payments to the Contractor on a timely basis thereafter.
- 1.5.7 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 the ENGINEER's design shall be final.
- 1.5.8 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.
- 1.5.9 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.
- 1.5.10 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.
- 1.5.11 Prepare for the OWNER's approval, Change Orders which address minor revisions of or adjustments to the original project scope of work.

- 1.5.12 Conduct a pre-final review of the construction project upon receipt of the Contractor's notice of substantial completion.
 - 1.5.13 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.
 - 1.5.14 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.
 - 1.5.15 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.
 - 1.5.16 Conduct a one-year warranty review of the completed construction, and advise OWNER of any defects that may need further attention by the Contractor.
- 1.6 **CONSTRUCTION REVIEW PHASE SERVICES:** Upon initiation of the construction activities, the ENGINEER shall:
- 1.6.1 Provide one or more "full time" Construction Review Representatives to assist the ENGINEER 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, state 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. The ENGINEER shall be responsible for scheduling the presence of the Construction Review Representative on the site based on the Contractor's activities.
 - 1.6.2 The purpose of the construction review representative at the site shall be to enable the ENGINEER 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.
 - 1.6.3 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 inclusion as Exhibit 1. By means of the more extensive on-site observations of the work in progress, the ENGINEER 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 constitute direction or approval of the Contractor's construction means, methods, techniques, sequences or procedures, or of any safety precautions and programs in connection with the work, and the ENGINEER shall not be responsible for the Contractor's failure to carry out the work in accordance with the Construction Contract.

- 1.6.4 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 the ENGINEER in verifying the accuracy and completeness of all claims for payment.
- 1.6.5 ENGINEER shall determine the appropriate times for the Construction Review Representative to be present on the PROJECT site to provide for such review.
- 1.7 **RECORD DOCUMENTS PHASE SERVICES:** Upon completion of the construction activities, the ENGINEER shall prepare "record" drawings of the finished work. Such drawings shall be prepared by the ENGINEER upon completion of the project and acceptance by the OWNER, and one set of "record" drawings shall be provided to the OWNER within thirty (30) days after the final construction review.
- 1.8 **O & M MANUAL PHASE SERVICES:** Not billed for separately. Prior to completion of the construction activities, the ENGINEER shall require the well contractor to prepare an Operation and Maintenance (O & M) Manual for the Well including:
 - 1.8.1 A narrative description of the operations and components of the completed water well portion of the Project.
 - 1.8.2 Manufacturers cut sheets indicating the general operational characteristics of the facility and maintenance intervals and procedures.
 - 1.8.3 A listing of all pertinent equipment manufactures and suppliers of materials which were incorporated into the completed Project.
 - 1.8.4 Documentation in accordance with and as required by identified regulatory agencies and/or funding agencies.
- 1.9 **GEOTECHNICAL SERVICES:** ENGINEER shall subcontract with a

geotechnical consultant to provide data and recommendations for the design of the foundation of the tank.

- 1.10 **ADDITIONAL SERVICES:** Upon receipt of the written authorization of the OWNER, the ENGINEER agrees to furnish or obtain from others, additional professional services related to the Project, as set forth herein below and contained within this Agreement:
- 1.10.1 Monitoring the performance of the completed improvements and making periodic visits to the facilities to verify the overall operational characteristics.
 - 1.10.2 Providing a one-year performance certificate and letter certifying the completion of one year of successful operation.
 - 1.10.3 Preparation of applications, engineering reports, technical investigations, maps and exhibits, and other supporting documents for government grants, loans or advances.
 - 1.10.4 Preparation of drawings from field measurements of existing construction when required for planning additions or alterations thereto.
 - 1.10.5 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.
 - 1.10.6 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 the ENGINEER.
 - 1.10.7 Preparation of design documents for alternate bids or for out-of-sequence work requested by the OWNER.
 - 1.10.8 Preparation of detailed renderings, exhibits or scale models for the Project.
 - 1.10.9 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.
 - 1.10.10 Provision of comparative studies of prospective sites.
 - 1.10.11 Provision of any type of field surveys not previously included for construction purposes.
 - 1.10.12 Provision of additional copies of reports, correspondence, submittal data, contract

documents and specifications, and prints of construction plans.

- 1.10.13 Investigations involving detailed considerations of operations, maintenance and overhead expenses; the performance of value engineering analyses; the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, and valuations; detailed quantity surveys of material and labor; and material audits or inventories required by the OWNER.
- 1.10.14 Additional services when the Project involves more than four (4) Construction Contracts, or separate equipment contracts, where only four (4) contracts were envisioned originally.
- 1.10.15 Preparation of special Change Orders when requested by the OWNER, and/or where not within the original project scope of work.
- 1.10.16 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, and (4) the Contractor's default under Construction Contract due to delinquency or insolvency.
- 1.10.17 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 thirty-(30) day start-up period.
- 1.10.18 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.
- 1.10.19 Provision of services as an expert witness for the OWNER in connection with litigation or other proceedings involving or relating to the Project.
- 1.10.20 Provision of additional services required by the acceptance of substitute materials or equipment other than "or equal" items.
- 1.10.21 Provision of services following completion of the project due to the Contractor rework of warranty items.
- 1.10.22 Provision of other services not otherwise provided for in this Agreement, including services normally furnished by the OWNER.

SECTION 2 - OWNER'S RESPONSIBILITIES

Under the provisions of this Agreement, the OWNER shall:

- 2.1 Provide the necessary support and assistance in a timely manner so as not to delay the services of the ENGINEER.
- 2.2 Provide the ENGINEER all criteria, design and construction standards and full information as to the OWNER's requirements for the project.
- 2.3 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 the ENGINEER, interpret and define the OWNER's policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of the ENGINEER's services.
- 2.4 Furnish to the ENGINEER 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.
- 2.5 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. The ENGINEER shall subcontract with a geotechnical engineer for soil borings and foundation recommendations at the tank site.
- 2.6 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.
- 2.7 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.
- 2.8 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.
- 2.9 Furnish above services at the OWNER's expense and in such manner that the ENGINEER may rely upon them in the performance of his services under this Agreement.
- 2.10 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.
- 2.11 Guarantee full and free access for the ENGINEER to enter upon all property required for the performance of the ENGINEER's services under this Agreement.
- 2.12 Give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise

becomes aware of any defect in the Project or other event which may substantially affect the ENGINEER's performance of services under this Agreement.

- 2.13 Compensate the ENGINEER for the services rendered under this Agreement in a timely manner.
- 2.14 Bear the costs of permits, legal advertisements, notices, approvals, and other direct expenses incident to completion of the Project.
- 2.15 Bear all costs incident to compliance with or performance of the requirements of this provision.

SECTION 3 - PERIOD OF SERVICE

- 3.1 The professional services authorized by this Agreement shall be performed in accordance with this Agreement during calendar years 2002 and 2003, if required.
- 3.2 The professional services provided according to hourly rates and performed after calendar year 2003 shall be provided in accordance with an amendment to this Agreement setting forth such new hourly rates as may be mutually agreed upon between the OWNER and ENGINEER.
- 3.3 This Agreement shall commence upon the date set forth herein above, and shall expire upon completion of the one year warranty period, upon receipt of the one year performance certification, and upon final acceptance of the completed Project by the OWNER.

SECTION 4 - ENGINEER'S COMPENSATION

- 4.1 **GENERAL:** In accordance with the terms and conditions of this Agreement, the ENGINEER shall provide professional services for which the OWNER shall compensate the ENGINEER as set forth herein below. Compensation shall consist of a combination of agreed lump sum amounts (for work where the scope is readily definable) and hourly allowances for work items where the scope is variable.
- 4.2 **PRELIMINARY DESIGN PHASE SERVICES:** As defined in Section 1.2 with compensation on the basis of either a lump sum amount or hourly plus allowable cost basis as identified below.
 - 4.2.1 **Basic Preliminary Design:** (Sect 1.2.1 through 1.2.1.2)
A lump sum of \$ 48,000.
- 4.3 **FINAL DESIGN PHASE SERVICES:** As defined in Section 1.3 with compensation on the basis of either a lump sum amount or hourly plus allowable cost basis as identified below.

4.3.1 **Basic Final Design Phase Services:** (Sect 1.3.1 through 1.3.1.10)
Lump sum of \$ 77,400.

4.3.2 **Right of Way Services:** (Sect 1.3.2)
Lump sum of \$ 8,000

4.4 **PRECONSTRUCTION, CONTRACT ADMINISTRATION, CONSTRUCTION REVIEW PHASE AND RECORD DOCUMENTS:** (Sect 1.4, 1.5, 1.6, 1.7 and 1.8)
A combined Lump Sum of \$ 130,000.

4.5 **GEOTECHNICAL:** (Sect 1.9)
A lump Sum of \$3500.

4.6 **ADDITIONAL SERVICES:** As defined in Section 1.10 with compensation as set forth herein below, plus direct reimbursable expenses.

4.6.1 Additional professional services shall be provided on an hourly basis in accordance with the hourly 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 calendar year 2003 in accordance with Section 3.2.

<u>PERSONNEL CLASSIFICATION</u>	<u>HOURLY RATE</u>	<u>PERSONNEL CLASSIFICATION</u>	<u>RATE</u>
Principal	\$ 115	Computer Aided Design (CAD)	15
Project Engineer	90	Administrative	
Engineer	80	Clerical	30
Engineering Assistant	70	Construction Review	65
Surveyor	70	Survey Party (Two Men)	85
Surveying Assistant	60	Survey Party (Three Men)	105
Designer	60		
Technician	50		

4.6.2 Cost of services provided under Section 1.10, Additional Services, of other professional consultants billed to the ENGINEER by the professional consultants for such services. These services may include geotechnical, architectural, structural, mechanical and electrical consultants.

4.7 **REIMBURSABLE EXPENSES:** As defined herein below, shall be reimbursed to the ENGINEER at cost.

4.7.1 Reimbursable expenses are in addition to compensation to the ENGINEER for **Additional Services** and include expenditures made by the ENGINEER, his employees or his consultants in the interest of the Project. Reimbursable Expenses include, but are not limited to, those listed herein below.

- 4.7.1.1 Expense of transportation, mileage, subsistence, rentals and lodging when traveling in connection with the Project.
- 4.7.1.2 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.
- 4.7.1.3 Expense of all reproduction, postage and handling of Plans, Specifications, Contract Documents, reports or other Project related work product of the ENGINEER.

4.8 PAYMENTS TO THE ENGINEER: Shall be made by the OWNER to the ENGINEER as specified herein below.

- 4.8.1 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 the ENGINEER's submittal of his monthly statement. Invoices for professional services rendered will be prepared in accordance with the ENGINEER's standard practices, and will be submitted to the OWNER by the ENGINEER on a monthly basis. Past due amounts owed to the ENGINEER 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 the ENGINEER on a timely basis.
- 4.8.2 For the **Preliminary Design Phase Services**, as specified in Sect 4.2, payments shall be made monthly based on the ENGINEER's estimate of the percentage completion of Basic Preliminary Design (Sect 4.2.1).
- 4.8.3 For the **Final Design Phase Services**, as specified in Sect 4.3, payments shall be made monthly based on the ENGINEER's estimate of the percentage completion of the Final Design and based upon actual hours and reimbursable expenses to date for the services listed in Sect 4.3.2.
- 4.8.4 For the **Preconstruction, Contract Administration Construction Review, Record Documents Phase Services and O & M Manual**, as specified in Section 4.4, payments shall be made monthly based on the ENGINEER's estimate of the percentage of completion of each sub-phase indicated herein below, which shall represent the following percentages of the total lump sum compensation specified:

Pre-Construction Phase	10.0%
Contract Administration Phase	20.0%

Construction Review Phase	65.0%
Record Documents and	5.0%
O & M Phase	
TOTAL OF LUMP SUM	100.0%

- 4.8.5 If the OWNER fails to make monthly payments due to the ENGINEER, the ENGINEER may, after giving seven (7) days written notice to the OWNER, suspend services under this Agreement.
- 4.8.6 No deductions shall be made from the ENGINEER's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors.
- 4.8.7 If the Project is delayed or if the ENGINEER's services for the Project are delayed or suspended for more than three months for reasons beyond the ENGINEER's control, the ENGINEER may, after giving seven (7) days written notice to the OWNER, terminate this Agreement and the OWNER shall compensate the ENGINEER in accordance with the termination provision contained hereafter in this Agreement, or the ENGINEER shall be entitled to an adjustment of the amounts and rates of compensation specified herein, in addition to consideration for the expenses incurred by the ENGINEER in the suspension and/or reactivation of his services.

SECTION 5 - COST CONTROL

- 5.1 The OWNER's budgetary requirements and considerations with respect to each work effort or initiative shall be established from time to time by mutual agreement between the OWNER and ENGINEER; and
- 5.2 Opinions of probable construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by ENGINEER hereunder will be made on the basis of ENGINEER's experience and qualifications, and represent ENGINEER's best judgment as an experienced and qualified design professional. It is recognized, however, the ENGINEER does not have control over the cost of labor, material, equipment, or services furnished by others, or over market conditions or contractors' methods or determining their prices, and that any utilitarian evaluation of any facility to be constructed or work to be performed on the basis of the work authorized herein must of necessity be speculative until completion of its detailed design. Accordingly, ENGINEER does not guarantee that proposals, bids or actual costs will not vary from opinions, evaluations or studies submitted by ENGINEER to OWNER hereunder.

SECTION 6 - GENERAL PROVISIONS

- 6.1 Ownership of Documents: All Plans, Specifications, Contract Documents and other work product of the ENGINEER for this Project are instruments of services for this Project only,

and shall remain the property of the ENGINEER whether the project is completed or not. Re-use of any instruments of service of the ENGINEER by the OWNER on extensions of this Project or on any other Project without the written permission of the ENGINEER shall be at the OWNER's risk and the OWNER agrees to defend, indemnify and hold harmless the ENGINEER from all claims, damages, and expenses including attorney's fees arising out of such unauthorized re-use of the ENGINEER's instruments of service by the OWNER OR BY OTHERS ACTING THROUGH THE OWNER. Any re-use or adaption of the ENGINEER's instruments of service occurring after the written agreement of the ENGINEER shall entitle the ENGINEER to further compensation in amount to be agreed upon by the OWNER AND ENGINEER.

- 6.2 Delegation of Duties: Neither the OWNER nor the ENGINEER shall assign, sublet or transfer any rights under or interest in, including, but without limitation, moneys that are due, this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to any assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.
- 6.3 Termination: This Agreement may be terminated by either party by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party. If this Agreement is terminated, the ENGINEER shall be paid for service performed to the termination notice date including Reimbursable Expenses due plus Termination Expenses. Termination Expenses are defined as Reimbursable Expenses directly attributable to termination, plus a reasonable fee to be mutually agreed upon at the appropriate time by both parties to account for ENGINEER's rescheduling adjustments, reassignment of personnel and related costs incurred due to termination.
- 6.4 Extent of Agreement: This Agreement, together with such amendments which may be executed from time to time, represents the entire and integrated Agreement between the OWNER and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and the ENGINEER.
- 6.5 Governing Laws: Unless otherwise specified within this Agreement, this Agreement shall be governed by the law of the principal place of business of the ENGINEER.
- 6.6 Litigation: Should litigation occur between the two parties relating to the provisions of this Agreement, all litigation or arbitration expenses, collection expenses, witness fees, court costs and attorneys fees incurred by the prevailing party shall be paid by the nonprevailing party to the prevailing party.

- 6.7 Performance: Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents of other events beyond the control of the other or the other's employees and agents.
- 6.8 Validity: In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be and remain valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- 6.9 Safety: The ENGINEER has not been retained or compensated to provide design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences, or procedures required for the Contractor to perform his work but not relating to the final or completed structure; omitted services include but are not limited to shoring, scaffolding, underpinning, temporary retainment of excavations and any erection methods and temporary bracing.
- 6.10 Practices: The ENGINEER intends to render the services under this Agreement in accordance with generally accepted professional practices for the intended use of the Project and makes no warranty, either express or implied.
- 6.11 Benefits: Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER, and not for the benefit of any other party.
- 6.12 Binding: OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER, and to the extent permitted herein, the assigns of OWNER and ENGINEER, are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives, and said assigns, of such other party, in respect of all covenants, agreements and obligations of the Agreement.
- 6.13 The ENGINEER will 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, disability, national origin or veterans status on all phases of the project.

SECTION 7 - SPECIAL PROVISIONS

- 7.1 **ENGINEER'S INSURANCE:** The ENGINEER shall acquire and/or maintain statutory workmen's compensation insurance coverage, employer's liability and general liability insurance coverage, for the life of this Agreement. Engineer currently maintains \$1,000,000

professional liability coverage, and agrees to attempt to maintain continuous professional liability coverage for the life of this Agreement, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the design professionals practicing in this state in this discipline are able to obtain such coverage.

- 7.2 CONTRACTOR'S INSURANCE:** 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 **\$500,000** 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 Section 7.4 "Indemnity". The comprehensive general liability insurance will include as additional named insureds: the OWNER; the ENGINEER; and each of their officers, agents and employees.
- 7.3 BUILDERS RISK "ALL RISK" INSURANCE:** Before commencement of the work, the OWNER will 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 insureds; the OWNER; the ENGINEER; and each of their officers, agents, employees 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.
- 7.4 INDEMNITY:** The OWNER will require that any Contractor or Subcontractors performing work in connection with the Drawings and Specifications produced under this Agreement to hold harmless indemnify and defend, the OWNER and the ENGINEER, their consultants and each of their officers, agents, and employees from any and all liability claims, losses or damage arising out of or alleged to arise from the Contractor's (or Subcontractor's) negligence in the performance of the work described in the Construction Contract Documents, but not including liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants or their officers, agents and employees.

7.5 LIMITATION OF LIABILITY: OWNER hereby agrees that to the fullest extent permitted by law, that the design professional's total aggregate liability to OWNER, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of, or in any way related to, the work efforts authorized herein, or this Agreement, from any cause or causes, including, but not limited to, the design professional's negligence, errors, omissions, strict liability, breach of contract or breach of warranty, shall not exceed the minimum that is allowed under the prevailing laws of the State of Mississippi.

SECTION 8 - EXECUTION

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed by their duly authorized representatives on the day and year first above written.

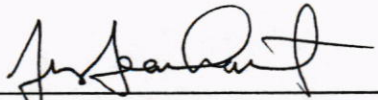
OWNER:

CITY OF CLINTON

Rosemary Aultman, Mayor

ENGINEER:

WILLIFORD, GEARHART & KNIGHT, INC.

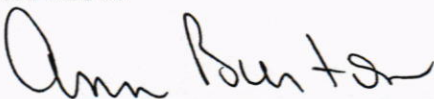


Gregory A. Gearhart, P.E., Principal

ATTEST:

Wayne Derrick, City Clerk

ATTEST:



Ann Burton, Administrative Manager