City of Hattiesburg, MS

200 Forrest St.
P.O. Box 1898
Hattiesburg, MS 39401

Meeting Agenda - Final

Tuesday, March 12, 2019

9:00 AM

Council Chambers

City Council - Special Called Meeting

City Council
Special Called Meeting

I. Call to Order

1. Consider Executive Session for the purposes of:
a) Negotiations with respect to pending litigation.
b) Discussions or negotiations regarding the location, relocation or expansion of a business

A. 2019-238 Approve Settlement and Mutual Release Agreement with Kohler Company, Forrest County, Mississippi and City of Hattiesburg, Mississippi and authorize the Mayor to execute the same.

Attachments: Kohler Settlement Agreement
Executed Kohler Engines_Hattiesburg_Settlement Agreement Executed

B. 2019-236 Approve Memorandum of Understanding by and between Forrest County Board of Supervisors, City of Hattiesburg, Forrest County Industrial Park Commission and Kohler Engines-Americas and authorize the Mayor to execute the same.

Attachments: MOU with Kohler Engines-Americas
Executed Kohler Engines_Hattiesburg_MOU Executed

II. Recess

City of Hattiesburg, MS

200 Forrest St.
P.O. Box 1898
Hattiesburg, MS 39401

Master

File Number: 2019-238

File ID:	2019-238	**Type:**	Regular Agenda Item	**Status:**	Approved
Version:	1	**Reference:**		**In Control:**	City Council
Requester:				**File Created:**	03/13/2019
Brief Title:	Settlement and Mutual Release Agreement			**Final Action:**	03/12/2019
				Minute Book Number:	

Title:

Approve Settlement and Mutual Release Agreement with Kohler Company, Forrest County, Mississippi and City of Hattiesburg, Mississippi and authorize the Mayor to execute the same.

Notes:			
		Agenda Date:	03/12/2019
Indexes:		**Agenda Number:**	
Sponsors:		**Enactment Date:**	
Attachments:	Kohler Settlement Agreement, Executed Kohler Engines_Hattiesburg_Settlement Agreement Executed	**Enactment Number:**	
Contact:		**Meeting Date:**	03/12/2019
Drafter:		**Effective Date:**	

History of Legislative File

Ver-sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council - Special Called Meeting	03/12/2019	Approve and Authorize				Pass

Action Text: A MOTION was made by Council Vice President Dryden and seconded by Member George to Approve Settlement and Mutual Release Agreement with Kohler Company, Forrest County, Mississippi and City of Hattiesburg, Mississippi and authorize the Mayor to execute the same.

There being no discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 4 - George, Delgado, Carroll and Dryden

Nays: 0

Absent: 1 - Brown

Yea: 4 Delgado
Carroll
Dryden
George

Text of Legislative File 2019-238

Title

Approve Settlement and Mutual Release Agreement with Kohler Company, Forrest County, Mississippi and City of Hattiesburg, Mississippi and authorize the Mayor to execute the same.

Summary

[Enter Summary Here Without Parentheses]

Budget Information

[Enter Budget Information Here Without Parentheses. Example: Cost Center Line Item, Amount]

Expenditure Type

[Enter Expenditure Type Here Without Parentheses. Example: Regular Budget Item, Grant, Lease Purchase, etc.]

Purchasing Item

[Enter Purchasing Item Here Without Parentheses. Example: Sealed Bid, State Contract, Unadvertised Bid, Regular Purchase.]

Publication Information

[Please enter publication sites and dates]

SETTLEMENT AND MUTUAL RELEASE

This settlement and mutual release, effective January 31, 2019, is entered by the following parties:

- **Kohler Co.**, and any of its affiliates, parent companies, subsidiaries, officers, directors, employees, or agents (**collectively "Kohler"**).
- **Forrest County, Mississippi**, and any of its board members, officers, employees, or agents (**collectively "Forrest County"**);
- **The City of Hattiesburg, Mississippi**, and any of its board members, officers, employees, or agents (**collectively "Hattiesburg"**).

1. Definitions. As used in this confidential settlement and mutual release the following terms and phrases shall have the stated meaning:

   a. "Agreement" means this confidential settlement and mutual release;

   b. "The Lawsuit" means the civil action styled *Kohler Co. v. Forrest County, Miss. et al.,* bearing Docket No. CI14-0239 in the Circuit Court of Forrest County, Mississippi, and bearing Docket No. 2018-TS-1400 on the docket of the Supreme Court of Mississippi;

   c. "Claims" means any and all claims, causes of action, demands, damages or losses which any of the parties in the Lawsuit have asserted or could have asserted against any other party, whether formally in the Lawsuit or otherwise in any way relating to, connected with or arising from the subject matter of the Lawsuit.

2. Purpose. Kohler, Forrest County, and Hattiesburg enter into this Agreement for the purpose of concluding the Lawsuit and Claims. For the Consideration described in paragraph 3 below, the Plaintiffs and Defendants declare that it is their intention to finally release and discharge

4831-2154-7397.7

one another from any Claims asserted by either Plaintiffs or Defendants, or which could have been asserted by them, in the Lawsuit or otherwise, from the beginning of time to infinity, and which are related to or arise from the Claims or the Lawsuit as set forth above. To accomplish these intentions, and for the mutual promises contained herein, the parties have entered this Agreement.

3. Settlement Consideration. The parties offer the following consideration and make the following acknowledgments in support of this Agreement:

a. The parties mutually agree to release any and all Claims against one another, as set forth more fully in paragraph 6 of this Agreement.

b. The parties agree to jointly file the necessary pleadings to dismiss the Lawsuit with prejudice, such pleadings to be filed no later than 30 days after the execution of this Agreement.

c. Forrest County and Hattiesburg agree that Kohler is entitled to the full ad valorem tax exemption allowed by MS Code Section 27-31-101 et seq. on all property set forth in Kohler's application for tax exemption filed with Forrest County and Hattiesburg before June 1, 2018, including all raw materials and work-in-process assessed in tax year 2018, and that Kohler's personal property tax liability for the 2018 tax year shall be reduced by $372,510 to reflect this Agreement. Accordingly, a tax payment of $1,052,032 made by Kohler on or before February 1, 2019 shall represent payment in full of all ad valorem taxes due to Forrest County and Hattiesburg for the 2018 tax year.

d. Likewise, Forrest County and Hattiesburg agree that upon filing by Kohler of the necessary ad valorem tax exemption applications on or before June 1, 2019, Kohler will be entitled to the full ad valorem tax exemption allowed by MS Code Section

27-31-101 et seq. on all eligible property set forth in Kohler's application for tax exemption for additions to its facilities in 2018, including all raw materials and work in process reflected in such applications.

e. Kohler intends to expand its manufacturing operations at its Hattiesburg facility by relocation of significant manufacturing assets currently located in the State of Wisconsin to Hattiesburg. Conditional upon: (i) Kohler making additional capital investments at its Hattiesburg facilities of at least $10,000,000.00 on or before January 1, 2020, and (ii) Kohler having at least 450 full time employees employed in Hattiesburg on or before January 1, 2020, Kohler will receive full ad valorem tax exemptions on abatable millage for all additions related to this expansion, including all raw materials and work-in-process used or held at Kohler's facilities for 10 years following the year in which the expansion assets are assessed. Upon meeting these two conditions, Hattiesburg's and Forrest County's obligation to provide these full ad valorem tax exemptions is unconditional. It is anticipated that the expansion assets will be placed in service in 2019 and 2020, meaning that Kohler's first personal property rendition for the expansion assets will be due on or before April 1, 2020 and Kohler's first exemption request for the expansion period will be due on or before June 1, 2020 and the second personal property rendition for the expansion assets will be due on or before April 1, 2021 and Kohler's exemption request for these additions will be due on or before June 1, 2021. Therefore, it is anticipated by the parties that the last payment upon which Kohler would receive an exemption from raw materials and work in progress under this Agreement would be for the payment due on February 1, 2031. Although the parties contemplate that there may be a separate agreement or memorandum of understanding relating to the relocation of the assets as described above, the obligation to grant the ad valorem tax exemptions provided for in this paragraph shall be (and continue to be) binding on Forrest County and Hattiesburg once Kohler has met the additional capital investment and employment numbers described above, even if a separate agreement or memorandum of understanding is not entered or has more specific terms regarding employment and capital investment.

f. Forrest County agrees to pay Kohler the sum of $675,750, which represents 75% of the amount of taxes due to be refunded by Forrest County to Kohler pursuant to the order entered in the Lawsuit. This sum shall be paid in annual installments of $67,575 each year for a period of 10 years, with the first payment being due on December 31, 2019 and each remaining payment being due on December 31 of the following year.

g. Hattiesburg agrees to pay Kohler the sum of $599,250, which represents 75% of the amount of tax refunds due from Hattiesburg to Kohler pursuant to the order entered in the Lawsuit. This sum shall be paid in annual installments over a 10-year period according to the following schedule:

    i. First Payment: $50,000 due on or before December 31, 2019;
    ii. Second Payment: $50,000 due on or before December 31, 2020;
    iii. Third Payment: $50,000 due on or before December 31, 2021;
    iv. Fourth Payment: $64,178 due on or before December 31, 2022;
    v. Fifth Payment: $64,178 due on or before December 31, 2023;
    vi. Sixth Payment: $64,178 due on or before December 31, 2024;

vii. Seventh Payment: $64,178 due on or before December 31, 2025;

viii. Eighth Payment: $64,178 due on or before December 31, 2026;

ix. Ninth Payment: $64,178 due on or before December 31, 2027;

x. Tenth Payment: $64,182 due on or before December 31, 2028.

h. No interest will accrue on the settlement sums due under this Agreement. Forrest County and Hattiesburg may prepay amounts due at any time during the 10-year payment schedules set forth above, but prepayments will not change the agreed upon due dates or scheduled amounts for any outstanding payments unless agreed to in writing by Kohler.

i. Kohler agrees that both Hattiesburg and Forrest County shall have the option to pay the foregoing payments by allowing Kohler an equivalent amount of credit against ad valorem taxes otherwise due in any given year. In the event that either Hattiesburg or Forrest County elects to do so and the amount of ad valorem taxes owed is less than the scheduled payment, the remainder shall be made by check payment to Kohler.

4. Costs and Fees. The parties to this Agreement shall bear their own costs and fees associated with the Lawsuit and settlement, including but not limited to attorneys' fees.

5. Release. For the Consideration described in Paragraph 3 above and as of the effective date of this Agreement, the parties hereby release and finally discharge one another from any and all Claims, causes of action, and demands of whatever nature, whether asserted in the Lawsuit or otherwise, insofar as they relate to the subject matter of the Lawsuit.

6. No Admission of Liability. All parties to this Agreement acknowledge that it is not an admission of liability on the merits of any of the claims by any of the parties to the Lawsuit, but instead is a compromise and settlement of disputed claims.

7. Representations and No Reliance. The undersigned parties warrant and represent that they have read and understood this Agreement, and that no representation made by any agent or attorney of any of the other signatories concerning the validity or merit of any claim herein released has induced any of the undersigned to make the Agreement; each of the undersigned has had the benefit of counsel and is acting upon its or his own best judgment, belief, and knowledge in entering into the Agreement. The parties to this Agreement and their counsel further agree to execute all additional documents necessary and take all actions necessary to accomplish and implement the full intent of this Agreement.

8. Entire Agreement. This Agreement represents the entire understanding and agreement, and supersedes all prior agreements and understandings, both written and oral, between the parties hereto relating to the settlement of the Lawsuit and the future ad valorem tax exemptions described herein. All prior and contemporaneous proposals, negotiations, representations and agreements are merged into this Agreement and no course of prior dealings between the parties shall be relevant to supplement or explain any term used in this Agreement. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or

remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

9. Applicable law. This Agreement shall be governed by the laws of the State of Mississippi.

10. Authority. The undersigned signatories warrant and covenant that they have requisite legal authority to enter into this Agreement and to bind their respective entities and principals to its terms.

11. Severability. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provisions or applications, and—to this end—the provisions of this Agreement are declared to be severable.

12. Multiple Counterparts. The parties acknowledge that duplicate originals of this Agreement are to be executed by them in multiple counterparts, with the same effect as if all parties had signed one and the same original document.

[Remainder of page left intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in several counterparts, each of which is an original as of the effective date of this Agreement set forth above:

KOHLER CO.

By: ______________________________

As Its: ______________________

Dated: ______________________

FORREST COUNTY, MISSISSIPPI

By: ______________________________
David Hogan, President
Board of Supervisors

Dated: ______________________

THE CITY OF HATTIESBURG, MISSISSIPPI

By: ______________________________
Toby Barker, Mayor

Dated: ______________________

STATE OF ______________

COUNTY OF ____________

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, ___________________________, who acknowledged on oath that he or she is fully authorized to execute the above and foregoing SETTLEMENT AND MUTUAL RELEASE and that the matters and things set forth therein are true and correct to the best of his information, knowledge and belief.

____

SWORN TO AND SUBSCRIBED before me, this the _____ day of ________, 2019.

____
NOTARY PUBLIC

My Commission Expires:

____

STATE OF MISSISSIPPI

COUNTY OF FORREST

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, **David Hogan, President of the Board of Supervisors of Forrest County, Mississippi,** who acknowledged on oath that he is fully authorized to execute the above and foregoing SETTLEMENT AND MUTUAL RELEASE and that the matters and things set forth therein are true and correct to the best of his information, knowledge and belief.

____

David Hogan

SWORN TO AND SUBSCRIBED before me, this the _____ day of March, 2019.

____

NOTARY PUBLIC

My Commission Expires:

____

STATE OF MISSISSIPPI

COUNTY OF FORREST

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, **Toby Barker, Mayor of The City of Hattiesburg, Mississippi**, who acknowledged on oath that he is fully authorized to execute the above and foregoing SETTLEMENT AND MUTUAL RELEASE and that the matters and things set forth therein are true and correct to the best of his information, knowledge and belief.

____
Toby Barker

SWORN TO AND SUBSCRIBED before me, this the _____ day of March, 2019.

____
NOTARY PUBLIC

My Commission Expires:

____

SETTLEMENT AND MUTUAL RELEASE

This settlement and mutual release, effective January 31, 2019, is entered by the following parties:

- **Kohler Co.**, and any of its affiliates, parent companies, subsidiaries, officers, directors, employees, or agents (**collectively "Kohler"**).
- **Forrest County, Mississippi**, and any of its board members, officers, employees, or agents (**collectively "Forrest County"**);
- **The City of Hattiesburg, Mississippi**, and any of its board members, officers, employees, or agents (**collectively "Hattiesburg"**).

1. Definitions. As used in this confidential settlement and mutual release the following terms and phrases shall have the stated meaning:

    a. "Agreement" means this confidential settlement and mutual release;

    b. "The Lawsuit" means the civil action styled *Kohler Co. v. Forrest County, Miss. et al.,* bearing Docket No. CI14-0239 in the Circuit Court of Forrest County, Mississippi, and bearing Docket No. 2018-TS-1400 on the docket of the Supreme Court of Mississippi;

    c. "Claims" means any and all claims, causes of action, demands, damages or losses which any of the parties in the Lawsuit have asserted or could have asserted against any other party, whether formally in the Lawsuit or otherwise in any way relating to, connected with or arising from the subject matter of the Lawsuit.

2. Purpose. Kohler, Forrest County, and Hattiesburg enter into this Agreement for the purpose of concluding the Lawsuit and Claims. For the Consideration described in paragraph 3 below, the Plaintiffs and Defendants declare that it is their intention to finally release and discharge

one another from any Claims asserted by either Plaintiffs or Defendants, or which could have been asserted by them, in the Lawsuit or otherwise, from the beginning of time to infinity, and which are related to or arise from the Claims or the Lawsuit as set forth above. To accomplish these intentions, and for the mutual promises contained herein, the parties have entered this Agreement.

3. Settlement Consideration. The parties offer the following consideration and make the following acknowledgments in support of this Agreement:

a. The parties mutually agree to release any and all Claims against one another, as set forth more fully in paragraph 6 of this Agreement.

b. The parties agree to jointly file the necessary pleadings to dismiss the Lawsuit with prejudice, such pleadings to be filed no later than 30 days after the execution of this Agreement.

c. Forrest County and Hattiesburg agree that Kohler is entitled to the full ad valorem tax exemption allowed by MS Code Section 27-31-101 et seq. on all property set forth in Kohler's application for tax exemption filed with Forrest County and Hattiesburg before June 1, 2018, including all raw materials and work-in-process assessed in tax year 2018, and that Kohler's personal property tax liability for the 2018 tax year shall be reduced by $372,510 to reflect this Agreement. Accordingly, a tax payment of $1,052,032 made by Kohler on or before February 1, 2019 shall represent payment in full of all ad valorem taxes due to Forrest County and Hattiesburg for the 2018 tax year.

d. Likewise, Forrest County and Hattiesburg agree that upon filing by Kohler of the necessary ad valorem tax exemption applications on or before June 1, 2019, Kohler will be entitled to the full ad valorem tax exemption allowed by MS Code Section

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e. Kohler intends to expand its manufacturing operations at its Hattiesburg facility by relocation of significant manufacturing assets currently located in the State of Wisconsin to Hattiesburg. Conditional upon: (i) Kohler making additional capital investments at its Hattiesburg facilities of at least $10,000,000.00 on or before January 1, 2020, and (ii) Kohler having at least 450 full time employees employed in Hattiesburg on or before January 1, 2020, Kohler will receive full ad valorem tax exemptions on abatable millage for all additions related to this expansion, including all raw materials and work-in-process used or held at Kohler's facilities for 10 years following the year in which the expansion assets are assessed. Upon meeting these two conditions, Hattiesburg's and Forrest County's obligation to provide these full ad valorem tax exemptions is unconditional. It is anticipated that the expansion assets will be placed in service in 2019 and 2020, meaning that Kohler's first personal property rendition for the expansion assets will be due on or before April 1, 2020 and Kohler's first exemption request for the expansion period will be due on or before June 1, 2020 and the second personal property rendition for the expansion assets will be due on or before April 1, 2021 and Kohler's exemption request for these additions will be due on or before June 1, 2021. Therefore, it is anticipated by the parties that the last payment upon which Kohler would receive an exemption from raw materials and work in progress under this Agreement would be for the payment due on February 1, 2031. Although the parties contemplate that there may be a separate agreement or memorandum of understanding relating to the relocation of the assets as described above, the obligation to grant the ad valorem tax exemptions provided for in this paragraph shall be (and continue to be) binding on Forrest County and Hattiesburg once Kohler has met the additional capital investment and employment numbers described above, even if a separate agreement or memorandum of understanding is not entered or has more specific terms regarding employment and capital investment.

f. Forrest County agrees to pay Kohler the sum of $675,750, which represents 75% of the amount of taxes due to be refunded by Forrest County to Kohler pursuant to the order entered in the Lawsuit. This sum shall be paid in annual installments of $67,575 each year for a period of 10 years, with the first payment being due on December 31, 2019 and each remaining payment being due on December 31 of the following year.

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viii. Eighth Payment: $64,178 due on or before December 31, 2026;

ix. Ninth Payment: $64,178 due on or before December 31, 2027;

x. Tenth Payment: $64,182 due on or before December 31, 2028.

h. No interest will accrue on the settlement sums due under this Agreement. Forrest County and Hattiesburg may prepay amounts due at any time during the 10-year payment schedules set forth above, but prepayments will not change the agreed upon due dates or scheduled amounts for any outstanding payments unless agreed to in writing by Kohler.

i. Kohler agrees that both Hattiesburg and Forrest County shall have the option to pay the foregoing payments by allowing Kohler an equivalent amount of credit against ad valorem taxes otherwise due in any given year. In the event that either Hattiesburg or Forrest County elects to do so and the amount of ad valorem taxes owed is less than the scheduled payment, the remainder shall be made by check payment to Kohler.

4. Costs and Fees. The parties to this Agreement shall bear their own costs and fees associated with the Lawsuit and settlement, including but not limited to attorneys' fees.

5. Release. For the Consideration described in Paragraph 3 above and as of the effective date of this Agreement, the parties hereby release and finally discharge one another from any and all Claims, causes of action, and demands of whatever nature, whether asserted in the Lawsuit or otherwise, insofar as they relate to the subject matter of the Lawsuit.

6. No Admission of Liability. All parties to this Agreement acknowledge that it is not an admission of liability on the merits of any of the claims by any of the parties to the Lawsuit, but instead is a compromise and settlement of disputed claims.

7. Representations and No Reliance. The undersigned parties warrant and represent that they have read and understood this Agreement, and that no representation made by any agent or attorney of any of the other signatories concerning the validity or merit of any claim herein released has induced any of the undersigned to make the Agreement; each of the undersigned has had the benefit of counsel and is acting upon its or his own best judgment, belief, and knowledge in entering into the Agreement. The parties to this Agreement and their counsel further agree to execute all additional documents necessary and take all actions necessary to accomplish and implement the full intent of this Agreement.

8. Entire Agreement. This Agreement represents the entire understanding and agreement, and supersedes all prior agreements and understandings, both written and oral, between the parties hereto relating to the settlement of the Lawsuit and the future ad valorem tax exemptions described herein. All prior and contemporaneous proposals, negotiations, representations and agreements are merged into this Agreement and no course of prior dealings between the parties shall be relevant to supplement or explain any term used in this Agreement. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or

remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

9. Applicable law. This Agreement shall be governed by the laws of the State of Mississippi.

10. Authority. The undersigned signatories warrant and covenant that they have requisite legal authority to enter into this Agreement and to bind their respective entities and principals to its terms.

11. Severability. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provisions or applications, and—to this end—the provisions of this Agreement are declared to be severable.

12. Multiple Counterparts. The parties acknowledge that duplicate originals of this Agreement are to be executed by them in multiple counterparts, with the same effect as if all parties had signed one and the same original document.

[Remainder of page left intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in several counterparts, each of which is an original as of the effective date of this Agreement set forth above:

KOHLER CO.

By: ______________________________

As Its: PRESIDENT - ENGINES

Dated: 3-7-19

FORREST COUNTY, MISSISSIPPI

By: ______________________________
David Hogan, President
Board of Supervisors

Dated: 3/12/19

THE CITY OF HATTIESBURG, MISSISSIPPI

By: ______________________________
Toby Barker, Mayor

Dated: 3/12/19

4831-2154-7397.7

STATE OF Wisconsin

COUNTY OF Sheboygan

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, ______________________, who acknowledged on oath that he or she is fully authorized to execute the above and foregoing SETTLEMENT AND MUTUAL RELEASE and that the matters and things set forth therein are true and correct to the best of his information, knowledge and belief.

____

SWORN TO AND SUBSCRIBED before me, this the 7th day of March, 2019.

NOTARY PUBLIC

My Commission Expires:

6/12/2020

4831-2154-7397.7

STATE OF MISSISSIPPI

COUNTY OF FORREST

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, **David Hogan, President of the Board of Supervisors of Forrest County, Mississippi,** who acknowledged on oath that he is fully authorized to execute the above and foregoing SETTLEMENT AND MUTUAL RELEASE and that the matters and things set forth therein are true and correct to the best of his information, knowledge and belief.

David Hogan

SWORN TO AND SUBSCRIBED before me, this the 12th day of March, 2019.

David B. Miller

NOTARY PUBLIC

STATE OF MISSISSIPPI NOTARY PUBLIC ID # 100551 DAVID B. MILLER Commission Expires Nov. 18, 2019 FORREST COUNTY

My Commission Expires:

11/18/19

4831-2154-7397.7

STATE OF MISSISSIPPI

COUNTY OF FORREST

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, **Toby Barker, Mayor of The City of Hattiesburg, Mississippi**, who acknowledged on oath that he is fully authorized to execute the above and foregoing SETTLEMENT AND MUTUAL RELEASE and that the matters and things set forth therein are true and correct to the best of his information, knowledge and belief.

Toby Barker

SWORN TO AND SUBSCRIBED before me, this the 14th day of March, 2019.

STATE OF MISSISSIPPI
ZACHARY CAREY JONES
ID NO. 121914
Commission Expires
10/19/2021
NOTARY PUBLIC
LAMAR COUNTY

NOTARY PUBLIC

My Commission Expires:

10/19/21

4831-2154-7397.7

City of Hattiesburg, MS

200 Forrest St.
P.O. Box 1898
Hattiesburg, MS 39401

Master

File Number: 2019-236

File ID: 2019-236 **Type:** Regular Agenda Item **Status:** Approved

Version: 1 **Reference:** **In Control:** City Council

Requester: **File Created:** 03/13/2019

Brief Title: MOU with COH, FCBOS, FCIPC and Kohler Engines-Americas **Final Action:** 03/12/2019

Minute Book Number:

Title:

Approve Memorandum of Understanding by and between Forrest County Board of Supervisors, City of Hattiesburg, Forrest County Industrial Park Commission and Kohler Engines-Americas and authorize the Mayor to execute the same.

Notes:

Agenda Date: 03/12/2019

Indexes: **Agenda Number:**

Sponsors: **Enactment Date:**

Attachments: MOU with Kohler Engines-Americas, Executed Kohler Engines_Hattiesburg_MOU Executed **Enactment Number:**

Contact: **Meeting Date:** 03/12/2019

Drafter: **Effective Date:**

History of Legislative File

Ver-sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council - Special Called Meeting	03/12/2019	Approve and Authorize				Pass

Action Text: A MOTION was made by Council Vice President Dryden and seconded by Member George to Approve Memorandum of Understanding by and between Forrest County Board of Supervisors, City of Hattiesburg, Forrest County Industrial Park Commission and Kohler Engines-Americas and authorize the Mayor to execute the same.

There being no discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 4 - George, Delgado, Carroll and Dryden

Nays: 0

Absent: 1 - Brown

Yea:	4	Delgado Carroll Dryden George

Text of Legislative File 2019-236

Title

Approve Memorandum of Understanding by and between Forrest County Board of Supervisors, City of Hattiesburg, Forrest County Industrial Park Commission and Kohler Engines-Americas and authorize the Mayor to execute the same.

Summary

[Enter Summary Here Without Parentheses]

Budget Information

[Enter Budget Information Here Without Parentheses. Example: Cost Center Line Item, Amount]

Expenditure Type

[Enter Expenditure Type Here Without Parentheses. Example: Regular Budget Item, Grant, Lease Purchase, etc.]

Purchasing Item

[Enter Purchasing Item Here Without Parentheses. Example: Sealed Bid, State Contract, Unadvertised Bid, Regular Purchase.]

Publication Information

[Please enter publication sites and dates]

MASTER PROJECT
MEMORANDUM OF UNDERSTANDING
KOHLER ENGINES-AMERICAS

This Master Project Memorandum of Understanding (this "MOU") is made and entered into by and among FORREST COUNTY, MISSISSIPPI, acting by and through its Board of Supervisors, hereinafter "County," THE CITY OF HATTIESBURG, MISSISSIPPI, acting by and through its Mayor and City Council, hereinafter "City," the FORREST COUNTY INDUSTRIAL PARK COMMISSION, hereinafter "FCIPC," KOHLER ENGINES-AMERICAS, hereinafter "Kohler" or "Company" to evidence their agreement and understandings as to a) the Company's relocation of a manufacturing operation from Wisconsin to facilities within the Hattiesburg/Forrest County Industrial Park, b) components of the incentive package supplied by the State of Mississippi, County and City, and c) the Company's investment and job creation requirements. The understandings and agreement are as follows:

WHEREAS, Kohler is an engine manufacturing company based in Kohler, Wisconsin, which desires to relocate select manufacturing operations (the "Project") from Wisconsin to its existing facilities and to incorporate the Project and its existing operations located within the Hattiesburg/Forrest County Industrial Park into existing facilities and a new facility also located therein (together the "Integrated Operations").

WHEREAS, Kohler intends to make a capital investment of Sixteen Million Two Hundred Thousand Dollars ($16,200,000.00) into the Project, for integration of the Project into existing facilities and for initial buildout of the leased premises, relocation of equipment and new equipment for the Integrated Operations.

WHEREAS, Kohler anticipates hiring at least Two Hundred Fifty (250) direct, full-time employees in Forrest County, at an average wage projected to be Forty-Five Thousand Dollars ($45,000.00). These 250 jobs are in addition to the Company's existing full-time workforce of

Three Hundred Fifty (350) employees in Forrest County. These jobs are expected to be created within thirty six (36) months of commencing operations in the leased premises.

WHEREAS, County, City and FCIPC desire Kohler to increase employment opportunities for citizens of the City, County and surrounding region by locating the Project within the Hattiesburg/Forrest County Industrial Park.

WHEREAS, County, City, FCIPC and the State of Mississippi, acting through the Mississippi Development Authority, hereinafter "MDA," are desirous of the Company locating the Project in the Hattiesburg/Forrest County Industrial Park and making the capital investment and hiring the full-time employees, as referenced above, which would result in a positive economic impact for all parties hereto.

WHEREAS, FCIPC and Bulk Industrial Group, LLC have agreed to make certain infrastructure upgrades to benefit the Project.

WHEREAS, Bulk Industrial Group, LLC and Company intend to enter into a lease agreement whereby Company will lease approximately 525,133 sq. ft. of an existing building as more particularly identified in Exhibit A.

WHEREAS, MDA has committed to make available an ACE Grant in an amount up to Two Million Six Hundred Thousand Dollars ($2,600,000.00) to assist with relocation of equipment and other eligible expenses for the Project, as approved by MDA and administered by the Area Development Partnership ("ADP").

WHEREAS, the City and County have agreed to provide ad valorem tax exemptions to the Company pursuant to a Settlement and Mutual Release Agreement dated effective January 31, 2019 (the "Settlement Agreement").

WHEREAS, the State has determined that, in addition to the ACE Grant, the Company qualifies for certain tax incentive programs and workforce training and recruitment services, with all such incentive package components being made available upon the assumption that the

Project will attain the private investment and job creation minimum thresholds set forth within the statutory requirements of the respective programs and additional requirements outlined herein.

WHEREAS, the Company acknowledges that the incentive package compiled for it through a collaboration between the State, County, City and FCIPC, is based on these assumptions and agrees to secure the necessary financing and to make the investment of private funds necessary to complete the Project and employ the number of employees set forth above, or agrees that it may be subject to the penalties for failure to meet the performance based incentive minimum targets.

NOW, THEREFORE, FOR AND IN CONSIDERATION of these premises, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the County, City, FCIPC, and the Company, do hereby agree, as follows:

1. The Company has selected and committed to lease space within an existing building located within the Hattiesburg/Forrest County Industrial Park as a part of the Integrated Operations; the site of this leased space constitutes real property currently owned by the Bulk Industrial Group LLC, with the site and leased premises being more particularly identified on the site map attached hereto as Exhibit A.

2. The Company intends to make an initial capital investment of Sixteen Million Two Hundred Thousand Dollars ($16,200,000.00) for the Project. This initial investment will relate to buildout of the above-described leased premises, relocation of existing equipment from Wisconsin, and new equipment for the Integrated Operations. The Company anticipates hiring Two Hundred Fifty (250) direct, full-time employees, at an average wage projected to be Forty-Five Thousand Dollars ($45,000.00), which employees are in addition to the Company's existing full-time workforce of Three Hundred Fifty (350) employees in Forrest County.

3. The State, County, City and FCIPC all recognize that the Project will be of significant benefit to the State and local economy and that certain grants, tax reductions and other

in-kind assistance to the Company is warranted as an incentive to ensure the Project will be located in the Hattiesburg/Forrest County Industrial Park.

4. The County, City, FCIPC and the State, acting through MDA, have worked collectively to assist the Company in locating the Project in the Hattiesburg/Forrest County Industrial Park and, based upon the Company's anticipated capital investment and job creation plans for the Project, have put in place an incentive package for the Company, which includes grants for equipment relocation expenses, improvements of public infrastructure, tax incentives and work force training and recruitment services, the value of all of which totals approximately Fourteen Million Dollars ($14,000,000.00) –over the first ten (10) years of the project. The attached Incentives Proposal Summary, attached hereto as Exhibit B, is a good faith estimate given the information provided by the Company. These estimates do not include depreciation and do not include raw materials and work in process because those estimations are difficult to determine over the next ten (10) years. Therefore, exact total amounts are unable to be determined at this time.

5. The Company has selected an existing building on a parcel in the Hattiesburg/Forrest County Industrial Park owned by Bulk Industrial Group LLC to incorporate into the Integrated Operations.

6. The incentive package for the Company compiled by the State, County, City and FCIPC, is in the form of grants, tax incentives and in-kind assistance, all of which is more particularly set forth as follows:

a. FCIPC will provide the funding necessary to reimburse the City for infrastructure upgrades to be bid by and supervised by the City to W. L. Runnels Industrial Drive and to that portion of the facility entrance within the public right-of-way. Bulk Industrial Group, LLC, will provide, at its sole cost, the infrastructure upgrades to that portion of the facility entrance on its private property, inclusive of the tie-in to the infrastructure upgrades within the public right-of-way, as reflected in the letter from Bulk Industrial Group, LLC, attached hereto as Exhibit C. The infrastructure upgrades to be made to W. L. Runnels Industrial Drive and to the facility entrance are more particularly described in Exhibit D, with a projected total cost of approximately $160,000.00.

b. The City has agreed to provide real and personal property ad valorem tax exemptions, including a Freeport Warehouse Exemption to the Company for ten (10) years, which is renewable upon application, pursuant to the Settlement Agreement.

c. The County has also agreed to provide real and personal property ad valorem tax exemptions, including a Freeport Warehouse Exemption to the Company for ten (10) years, which is renewable upon application, pursuant to the Settlement Agreement.

d. The Company may also receive corporate income tax credits, sales and use tax exemptions and rebates under the Advantage Jobs Rebate Program as long as the Company meets minimum requirements as set forth in State statute, as well as rules and regulations set forth by MDA and the Mississippi Department of Revenue.

e. Kohler will also receive workforce training and recruitment services through the WIN employment center and Pearl River Community College as well as a Mississippi Works Fund grant in an amount of up to $300,000.00, to be administered by MDA to assist with job creation and for additional post-employment training either at a community college or internally conducted.

f. The Company will also receive an ACE Grant in an amount of up to Two Million Six Hundred Thousand Dollars ($2,600,000.00) to assist with relocation of equipment and other eligible expenses, as approved by MDA, which will be administered by the ADP.

g. An itemization of the Ace Grant and the Mississippi Works Fund incentive package is set forth more particularly in the August 28, 2018 commitment letter to the Company from MDA (the "MDA Commitment Letter"), a copy of which is attached hereto as Exhibit E.

7. The Company agrees that, in order to fully realize the entirety of the incentive package described in the MDA Commitment Letter and in the Incentives Proposal Summary, the Company must reach certain thresholds with regard to capital investment and job creation, and comply with other requirements, which are as follows:

a. The Company shall provide proof that it has invested at least $16,200,000.00 in to the Project within three (3) years of the date of execution of this MOU.

b. Regarding the ACE Grant, the Company shall provide proof that it has hired and retained at least 250 new, full-time employees within three (3) years of the date of execution of this MOU and the continuing obligation to provide proof that the new employment level was maintained for at least an additional two-year period.

c. Notwithstanding anything herein to the contrary, regarding real and personal property ad valorem tax exemptions by the City and County, the exemptions are as described in the Settlement Agreement.

d. Kohler promises to act as an Equal Opportunity Employer and gives assurance of its willingness to comply with all pertinent state and federal laws or acts concerning non-discrimination and equal employment opportunity requirements and will fill these job positions without regard to Age, Race, Religion, National Origin, Genetic Information, Color, Sex, Marital Status, or Disability.

e. The Company shall keep and maintain books, records and other documents relating directly to the expenditure of private funds and the hiring of persons to fill the new jobs created as a result of this project.

8. If the Company fails to meet the minimum job creation and capital investment requirements for the project, as stipulated herein, the Company will be required to reimburse on a pro rata share basis the funds provided to it from the ACE Grant and the Mississippi Works fund grant.

9. This MOU shall be governed by and construed in accordance with the laws of the State of Mississippi.

10. The invalidity or unenforceability of any particular provision of this MOU shall not affect the other provisions hereof, which shall remain in full force and effect, and this MOU shall be construed in all respects as if the invalid or unenforceable provision had been revised to the minimum extent necessary to make it valid and fully enforceable under applicable law.

11. The failure of any party hereto to enforce any provision(s) of this MOU shall not constitute a waiver by such party of any such provision(s).

12. The parties hereto agree to maintain as confidential and not disclose any Confidential Information and trade secrets of the Company disclosed as part of this economic development process as the same is proprietary to the Company. In addition, all parties hereto agree to maintain as confidential all negotiations and discussions leading to the provisions of this Agreement which are not required by law to be disclosed. The parties agree to work together in the preparation of an Announcement Ceremony and accompanying press release to announce the expansion of the Company's manufacturing operations in the Hattiesburg/Forrest County Industrial Park and the anticipated capital investment and job creation figures.

13. The Company shall have no right to assign its rights hereunder without first obtaining the prior written consent of the other parties hereto.

14. This MOU may not be modified or amended except by a written instrument executed by the parties hereto.

15. The parties hereto may execute this MOU in any number of counterparts, each of which the parties shall deem to be an original and all of which together shall constitute one and the same MOU. Each party hereto may execute this MOU by signing any such counterpart.

EXECUTED effective as of the ____ day of ___________, 2019, by a duly authorized representative of each party hereto.

KOHLER ENGINES-AMERICAS

By: ______________________________
Brian Melka, President

FORREST COUNTY INDUSTRIAL PARK COMMISSION

By:______________________________
James K. Dukes, Chairman

FORREST COUNTY, MISSISSIPPI

By: ______________________________
David Hogan, President
Board of Supervisors

THE CITY OF HATTIESBURG, MISSISSIPPI

By:______________________________
Toby Barker, Mayor

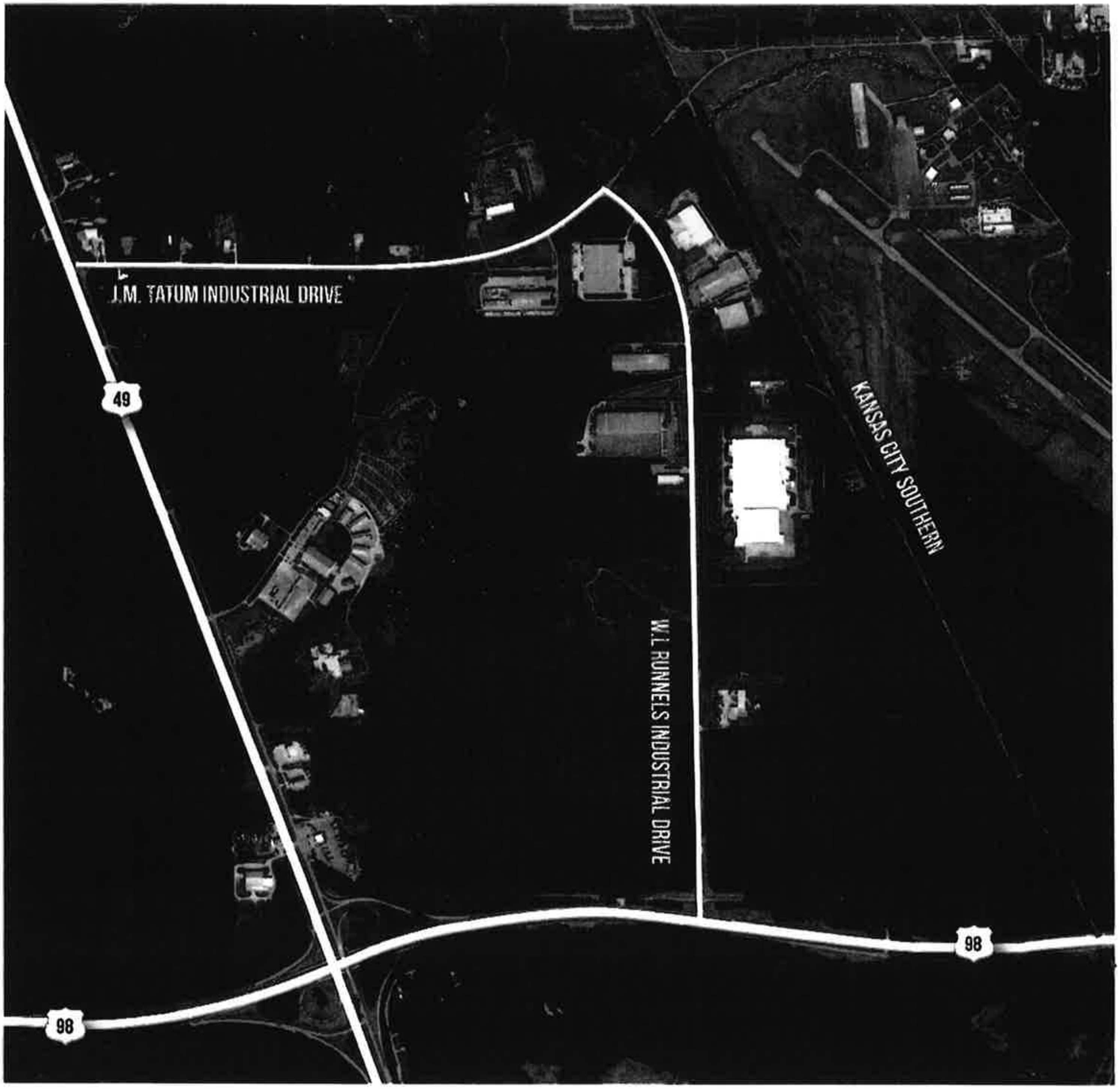
EXHIBIT A

Site Map

BULK INDUSTRIAL BUILDING

Forrest County Industrial Park

Aerial Map



LEGEND

Bulk Industrial Building

EXHIBIT B

Incentives Proposal Summary

KOHLER ENGINES

INCENTIVES PROPOSAL

PROJECT KOHLER ENGINES

SUMMARY OF ESTIMATED VALUE RECEIVED OVER 10 YEARS

PENDING FINAL APPROVAL FROM LOCAL UNITS OF GOVERNMENT AND MDA

SALES TAX SAVINGS *Upfront tax exemption on building materials and new manufacturing machinery*	
New Equipment	**$60,000**
LOCAL PROPERTY TAX SAVINGS *Property tax exemption on real and personal property and Freeport Warehouse exemption on finished goods inventory*	
Building & Equipment	**$1,642,986**
Inventory (Freeport Warehouse)	**$6,540,120**
ADVANTAGE JOBS REBATE *Cash rebate of 90% of payroll taxes up to 4% of total payroll*	**$2,843,266**
ACE GRANT *Cash grant to offset equipment relocation expense or other qualifying expenses*	**$2,600,000**
LOCAL INFRASTRUCTURE ASSISTANCE *Upgrades to facility entrance and adjacent roadway* **To be paid for by local public and private entities*	**$160,000**
MISSISSIPPI WORKS WORKFORCE TRAINING FUND *This flexible workforce training incentive commits additional funds to cover expenses incurred by the company associated with training new employees*	**$300,000**
TOTAL VALUE	**$14,146,972**

mississippi development authority MISSISSIPPI mississippi.org

FORREST COUNTY 1908 MISSISSIPPI

CITY OF HATTIESBURG MISSISSIPPI

AREA DEVELOPMENT PARTNERSHIP GREATER HATTIESBURG MS

EXHIBIT C

Bulk Industrial Group, LLC Letter

BULK Bulk Industrial Group LLC

The Value Leader in Industrial Real Estate

December 4, 2018

Honorable Toby Barker
Mayor, City of Hattiesburg
P.O. Box 1898
Hattiesburg, MS 39403-1898

Mayor Barker,

Bulk Industrial Group, LLC owns and operates a Class A manufacturing building located at 95 W.L. Runnels Industrial Drive in Hattiesburg, MS and within the Forrest County Industrial Park. Bulk Industrial executives are currently pursuing a lease with the Kohler Company for 302,155 square feet of space within said building.

In the interest of economic development, the City of Hattiesburg, Forrest County, and the Forrest County Industrial Park Commission have made certain commitments for the improvement of public infrastructure including:

1. Restriping of W.L. Runnels Drive near U.S. Highway 98, and

2. Installation of a new curb cut and driveway extension to allow direct access into the office space located along the western side of the Bulk Industrial building.

As part of this project, Bulk Industrial Group, LLC commits to constructing and funding all necessary improvements falling on the company's private property that are associated with the curb cut and driveway extension mentioned above. This aligns with previous communications the company has had with the Area Development Partnership, Forrest County and the City of Hattiesburg.

Bulk Industrial looks forward to continuing our long-standing partnership with the Kohler Company and our local allies in Hattiesburg. Please let me know how I can be of further assistance.

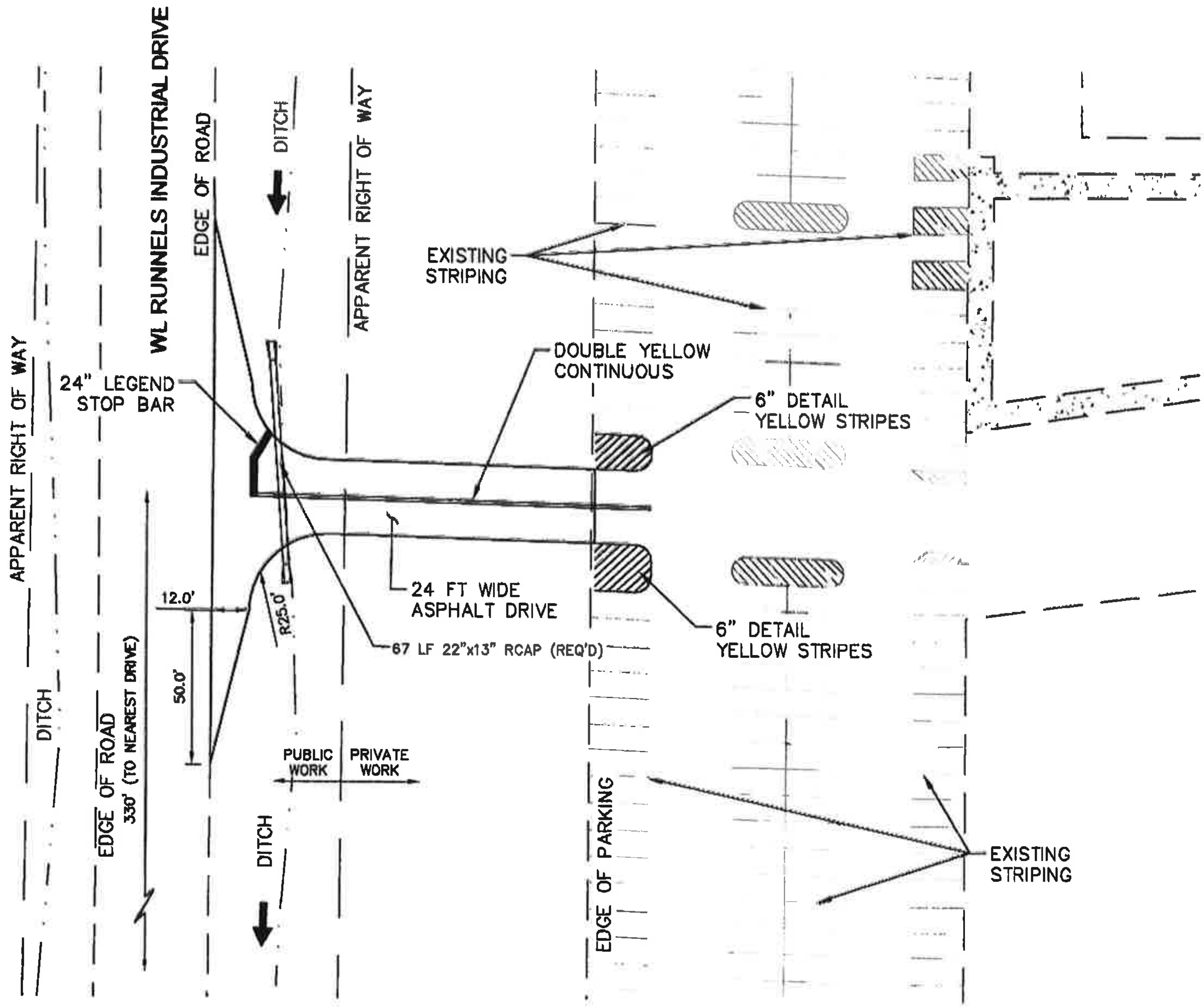
Sincerely,

Todd P. Mendon

Todd P. Mendon, SIOR
Chief Executive Officer
Bulk Industrial Group, LLC

EXHIBIT D

Infrastructure Upgrades



NOTE:
NOT FOR CONSTRUCTION

PROJECT SITE MAP - PROPOSED DRIVEWAY

WL RUNNELS INDUSTRIAL DRIVE AT OLD SUNBEAM BUILDING

sdw Engineering Progress
301 Second Ave. | Hattiesburg, MS 39401 | (p) 601.544.1821 | (f) 601.544.0501 | sd-w.com

GRAPHIC SCALE
0 25 50 100
(IN FEET)

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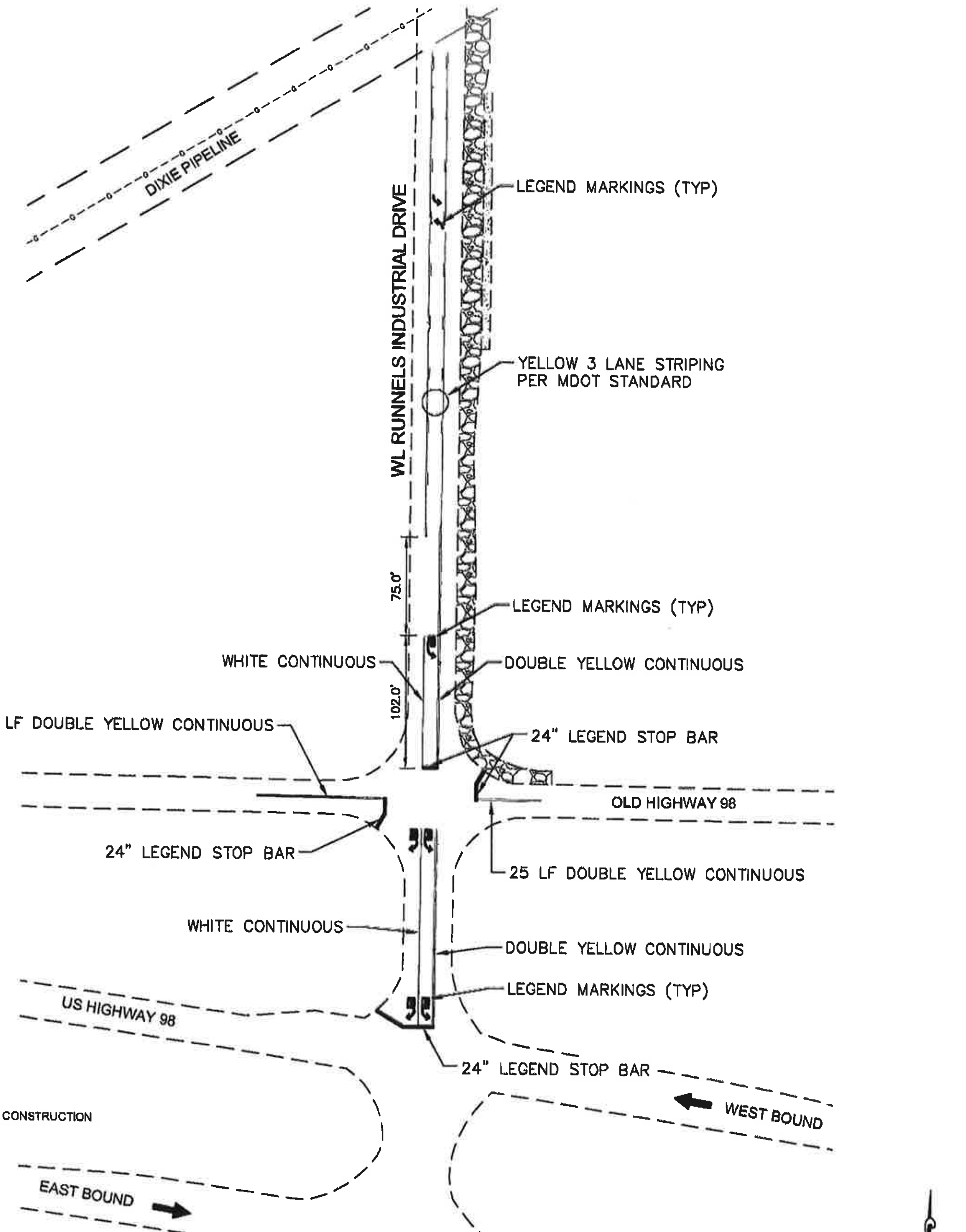
DATE: 08-06-2018
DWG No.: 16772



NOTE:
NOT FOR CONSTRUCTION

PROJECT SITE MAP - STRIPING

WL RUNNELS INDUSTRIAL DRIVE AT US 98 EAST

GRAPHIC SCALE

(IN FEET)

sdw
Engineering Progress
301 Second Ave. | Hattiesburg, MS 39401 | (p) 601.544.1821 | (f) 601.544.0501 | sdw.com

G:\PROJECTS\Area Development Partnership\16772 - Sunbeam Building Improvements\16772\CAD Files\16772_Design_v1.dwg, Map 1, 8/7/2018 11:06:27 AM

DATE: 08-06-2018
DWG No.: 16772

Preliminary Opinion of Probable Costs - Public Work | Project No.: 16772 | Date: 08-23-2018

Striping and Driveway Installation - W.L. Runnels Ind. Dr.

Hattiesburg-Forrest County Industrial Park

ITEM No.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENSION
1	Clearing and Grubbing	1	Lump Sum	$200.00	$200.00
2	Unclassified Excavation	5	Cu.Yd.	$8.00	$40.00
3	Borrow Excavation, LVM, (Cl 9, Gr C)	85	Cu.Yd.	$15.00	$1,275.00
4	Temporary Grassing	1	Lump Sum	$600.00	$300.00
5	Temporary Erosion Control Measures, Per Plans	1	Lump Sum	$1,000.00	$1,000.00
6	Granular Material (LVM) (Class 9, Group B)	25	Cu.Yd.	$12.00	$300.00
7	Crushed Aggregate (610)	136	Tons	$50.00	$6,800.00
8	9.5 mm, ST, Asphalt Pavement	23	Tons	$150.00	$3,450.00
9	19 mm, ST, Asphalt Pavement	70	Tons	$150.00	$10,500.00
10	22"x13" RCAP, Plastic Gaskets, Bedding	68	Lin. Ft.	$40.00	$2,720.00
11	22"x13" RCAP FES, Plastic Gaskets, Bedding	2	Each	$2,500.00	$5,000.00
12	6" Thermoplastic Detail Traffic Stripe, Yellow	1,680	Lin. Ft.	$2.50	$4,200.00
13	6" Thermoplastic Detail Traffic Stripe, White	500	Lin. Ft.	$2.50	$1,250.00
14	Thermoplastic Legend, White (6"Equiv)	540	Lin. Ft.	$2.50	$1,350.00
15	Thermoplastic Legend, White	225	Sq. Ft.	$10.00	$2,250.00
16	Raised Reflective Pavement Markers, Yellow	100	Each	$15.00	$1,500.00
17	Raised Reflective Pavement Markers, Red/White	20	Each	$15.00	$300.00
18	Standard Roadside Signs, Sheet Aluminum, 0.125" Thickness	9	Sq. Ft.	$25.00	$225.00
19	Steel U-Section Posts, 2.0 Lbs/Ft	15	Lin. Ft.	$8.00	$120.00
20	Grassing	1,200	Sq. Ft.	$10.00	$12,000.00
21	Construction Staking	1	Lump Sum	$1,250.00	$1,250.00
22	Maintenance of Traffic	1	Lump Sum	$5,000.00	$5,000.00
23	Mobilization	1	Lump Sum	$5,000.00	$5,000.00

		Project Construction Subtotal	**$66,030.00**
	25%	Contingencies	$16,507.50
		Project ConcstructionTotal	**$82,537.50**
		Design Engineering	$9,904.50
		Const Engineering & Inspection	$6,603.00
		Project Grand Total	**$99,045.00**

Preliminary Opinion of Probable Costs - Private Work | Project No.: 16772 | Date: 08-23-2018

Striping and Driveway Installation - W.L. Runnels Ind. Dr.

Hattiesburg-Forrest County Industrial Park

ITEM No.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENSION
1	Clearing and Grubbing	1	Lump Sum	$800.00	$800.00
2	Removal of Striping	50	Lin. Ft.	$2.00	$100.00
3	Unclassified Excavation	5	Cu.Yd.	$8.00	$40.00
4	Borrow Excavation, LVM, (Cl 9, Gr C)	65	Cu.Yd.	$15.00	$975.00
5	Temporary Grassing	1	Lump Sum	$900.00	$450.00
6	Temporary Erosion Control Measures, Per Plans	1	Lump Sum	$1,500.00	$1,500.00
7	Granular Material (LVM) (Class 9, Group B)	135	Cu.Yd.	$12.00	$1,620.00
8	Crushed Aggregate (610)	105	Tons	$50.00	$5,250.00
9	9.5 mm, ST, Asphalt Pavement	18	Tons	$150.00	$2,700.00
10	19 mm, ST, Asphalt Pavement	52	Tons	$150.00	$7,800.00
11	6" Thermoplastic Detail Traffic Stripe, Yellow	520	Lin. Ft.	$2.50	$1,300.00
12	Grassing	1,200	Sq. Ft.	$10.00	$12,000.00
13	Construction Staking	1	Lump Sum	$1,250.00	$1,250.00
14	Mobilization	1	Lump Sum	$3,500.00	$3,500.00
				Project Construction Subtotal	**$39,285.00**
		25%		Contingencies	$9,821.25
				Project ConcstructionTotal	**$49,106.25**
				Design Engineering	$5,892.75
				Const Engineering & Inspection	$3,928.50
				Project Grand Total	**$58,927.50**

EXHIBIT E

MDA Commitment Letter
August 28, 2018

STATE OF MISSISSIPPI
PHIL BRYANT, GOVERNOR
MISSISSIPPI DEVELOPMENT AUTHORITY
GLENN MCCULLOUGH, JR.
EXECUTIVE DIRECTOR

August 28, 2018

Mr. Jerry L. Stone
Plant Manager - Hattiesburg
Kohler Engines
182 JM Tatum Industrial Drive
Hattiesburg, Mississippi 39401

Dear Mr. Stone:

The Mississippi Development Authority (MDA) would like to convey its sincere gratitude to Kohler Engines for considering Mississippi for the relocation of their engine manufacturing facility. Projects like this are extremely important to the continued growth and prosperity of our State. As a result, MDA will provide the following to assist with your project:

ACE Grant – A grant of up to $2,600,000 will be made available to the local economic development authority to assist with the relocation of equipment and other eligible expenses, as approved by MDA. The company will have three years to create 250 new, full-time jobs and must maintain the new employment level for a two-year maintenance period.

MS Works Fund – A grant will be provided for this project in the amount of up to $300,000. This grant is administered by MDA for job creation projects and compliments Mississippi's existing workforce programs. The funds are flexible and may be used to offer additional post-employment training at a community college or to offset training conducted internally by a company. Travel expenditures directly related to training, as well as training-related equipment may also be covered.

These monies are being made available based upon the commitment that your investment will be at least $13,600,000 and Kohler will create at least 250 new, full-time positions in Forrest County. These 250 jobs are in addition to your existing workforce of 350 employees. This financial offer is contingent upon MDA's satisfactory financial and project due diligence review. It is also understood that the local entity and the business must meet minimum requirements set forth in state statutes and the rules and regulations of this program. If the number of jobs or costs of the infrastructure improvements change, MDA will want to discuss the new proposal before there is a final commitment of funds. In compliance with MDA's policy, we will hold the funds for 90 days. The deadline will be November 28, 2018.

We look forward to working with you in support of this project. If you have any questions, please contact our Project Manager Ross Ivey. Ross can be reached at 601-359-2900 or at rivey@mississippi.org.

Very truly yours,

Glenn McCullough, Jr.

GM:ri

cc: Todd Jackson, Executive Vice President, Area Development Partnership

MASTER PROJECT
MEMORANDUM OF UNDERSTANDING
KOHLER ENGINES-AMERICAS

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in-kind assistance to the Company is warranted as an incentive to ensure the Project will be located in the Hattiesburg/Forrest County Industrial Park.

4. The County, City, FCIPC and the State, acting through MDA, have worked collectively to assist the Company in locating the Project in the Hattiesburg/Forrest County Industrial Park and, based upon the Company's anticipated capital investment and job creation plans for the Project, have put in place an incentive package for the Company, which includes grants for equipment relocation expenses, improvements of public infrastructure, tax incentives and work force training and recruitment services, the value of all of which totals approximately Fourteen Million Dollars ($14,000,000.00) –over the first ten (10) years of the project. The attached Incentives Proposal Summary, attached hereto as Exhibit B, is a good faith estimate given the information provided by the Company. These estimates do not include depreciation and do not include raw materials and work in process because those estimations are difficult to determine over the next ten (10) years. Therefore, exact total amounts are unable to be determined at this time.

5. The Company has selected an existing building on a parcel in the Hattiesburg/Forrest County Industrial Park owned by Bulk Industrial Group LLC to incorporate into the Integrated Operations.

6. The incentive package for the Company compiled by the State, County, City and FCIPC, is in the form of grants, tax incentives and in-kind assistance, all of which is more particularly set forth as follows:

a. FCIPC will provide the funding necessary to reimburse the City for infrastructure upgrades to be bid by and supervised by the City to W. L. Runnels Industrial Drive and to that portion of the facility entrance within the public right-of-way. Bulk Industrial Group, LLC, will provide, at its sole cost, the infrastructure upgrades to that portion of the facility entrance on its private property, inclusive of the tie-in to the infrastructure upgrades within the public right-of-way, as reflected in the letter from Bulk Industrial Group, LLC, attached hereto as Exhibit C. The infrastructure upgrades to be made to W. L. Runnels Industrial Drive and to the facility entrance are more particularly described in Exhibit D, with a projected total cost of approximately $160,000.00.

b. The City has agreed to provide real and personal property ad valorem tax exemptions, including a Freeport Warehouse Exemption to the Company for ten (10) years, which is renewable upon application, pursuant to the Settlement Agreement.

c. The County has also agreed to provide real and personal property ad valorem tax exemptions, including a Freeport Warehouse Exemption to the Company for ten (10) years, which is renewable upon application, pursuant to the Settlement Agreement.

d. The Company may also receive corporate income tax credits, sales and use tax exemptions and rebates under the Advantage Jobs Rebate Program as long as the Company meets minimum requirements as set forth in State statute, as well as rules and regulations set forth by MDA and the Mississippi Department of Revenue.

e. Kohler will also receive workforce training and recruitment services through the WIN employment center and Pearl River Community College as well as a Mississippi Works Fund grant in an amount of up to $300,000.00, to be administered by MDA to assist with job creation and for additional post-employment training either at a community college or internally conducted.

f. The Company will also receive an ACE Grant in an amount of up to Two Million Six Hundred Thousand Dollars ($2,600,000.00) to assist with relocation of equipment and other eligible expenses, as approved by MDA, which will be administered by the ADP.

g. An itemization of the Ace Grant and the Mississippi Works Fund incentive package is set forth more particularly in the August 28, 2018 commitment letter to the Company from MDA (the "MDA Commitment Letter"), a copy of which is attached hereto as Exhibit E.

7. The Company agrees that, in order to fully realize the entirety of the incentive package described in the MDA Commitment Letter and in the Incentives Proposal Summary, the Company must reach certain thresholds with regard to capital investment and job creation, and comply with other requirements, which are as follows:

a. The Company shall provide proof that it has invested at least $16,200,000.00 in to the Project within three (3) years of the date of execution of this MOU.

b. Regarding the ACE Grant, the Company shall provide proof that it has hired and retained at least 250 new, full-time employees within three (3) years of the date of execution of this MOU and the continuing obligation to provide proof that the new employment level was maintained for at least an additional two-year period.

c. Notwithstanding anything herein to the contrary, regarding real and personal property ad valorem tax exemptions by the City and County, the exemptions are as described in the Settlement Agreement.

d. Kohler promises to act as an Equal Opportunity Employer and gives assurance of its willingness to comply with all pertinent state and federal laws or acts concerning non-discrimination and equal employment opportunity requirements and will fill these job positions without regard to Age, Race, Religion, National Origin, Genetic Information, Color, Sex, Marital Status, or Disability.

e. The Company shall keep and maintain books, records and other documents relating directly to the expenditure of private funds and the hiring of persons to fill the new jobs created as a result of this project.

8. If the Company fails to meet the minimum job creation and capital investment requirements for the project, as stipulated herein, the Company will be required to reimburse on a pro rata share basis the funds provided to it from the ACE Grant and the Mississippi Works fund grant.

9. This MOU shall be governed by and construed in accordance with the laws of the State of Mississippi.

10. The invalidity or unenforceability of any particular provision of this MOU shall not affect the other provisions hereof, which shall remain in full force and effect, and this MOU shall be construed in all respects as if the invalid or unenforceable provision had been revised to the minimum extent necessary to make it valid and fully enforceable under applicable law.

11. The failure of any party hereto to enforce any provision(s) of this MOU shall not constitute a waiver by such party of any such provision(s).

12. The parties hereto agree to maintain as confidential and not disclose any Confidential Information and trade secrets of the Company disclosed as part of this economic development process as the same is proprietary to the Company. In addition, all parties hereto agree to maintain as confidential all negotiations and discussions leading to the provisions of this Agreement which are not required by law to be disclosed. The parties agree to work together in the preparation of an Announcement Ceremony and accompanying press release to announce the expansion of the Company's manufacturing operations in the Hattiesburg/Forrest County Industrial Park and the anticipated capital investment and job creation figures.

13. The Company shall have no right to assign its rights hereunder without first obtaining the prior written consent of the other parties hereto.

14. This MOU may not be modified or amended except by a written instrument executed by the parties hereto.

15. The parties hereto may execute this MOU in any number of counterparts, each of which the parties shall deem to be an original and all of which together shall constitute one and the same MOU. Each party hereto may execute this MOU by signing any such counterpart.

EXECUTED effective as of the ____ day of __________, 2019, by a duly authorized representative of each party hereto.

KOHLER ENGINES-AMERICAS

By: ______________________
Brian Melka, President

FORREST COUNTY INDUSTRIAL PARK COMMISSION

By: ______________________
James K. Dukes, Chairman

FORREST COUNTY, MISSISSIPPI

By: ______________________
David Hogan, President
Board of Supervisors

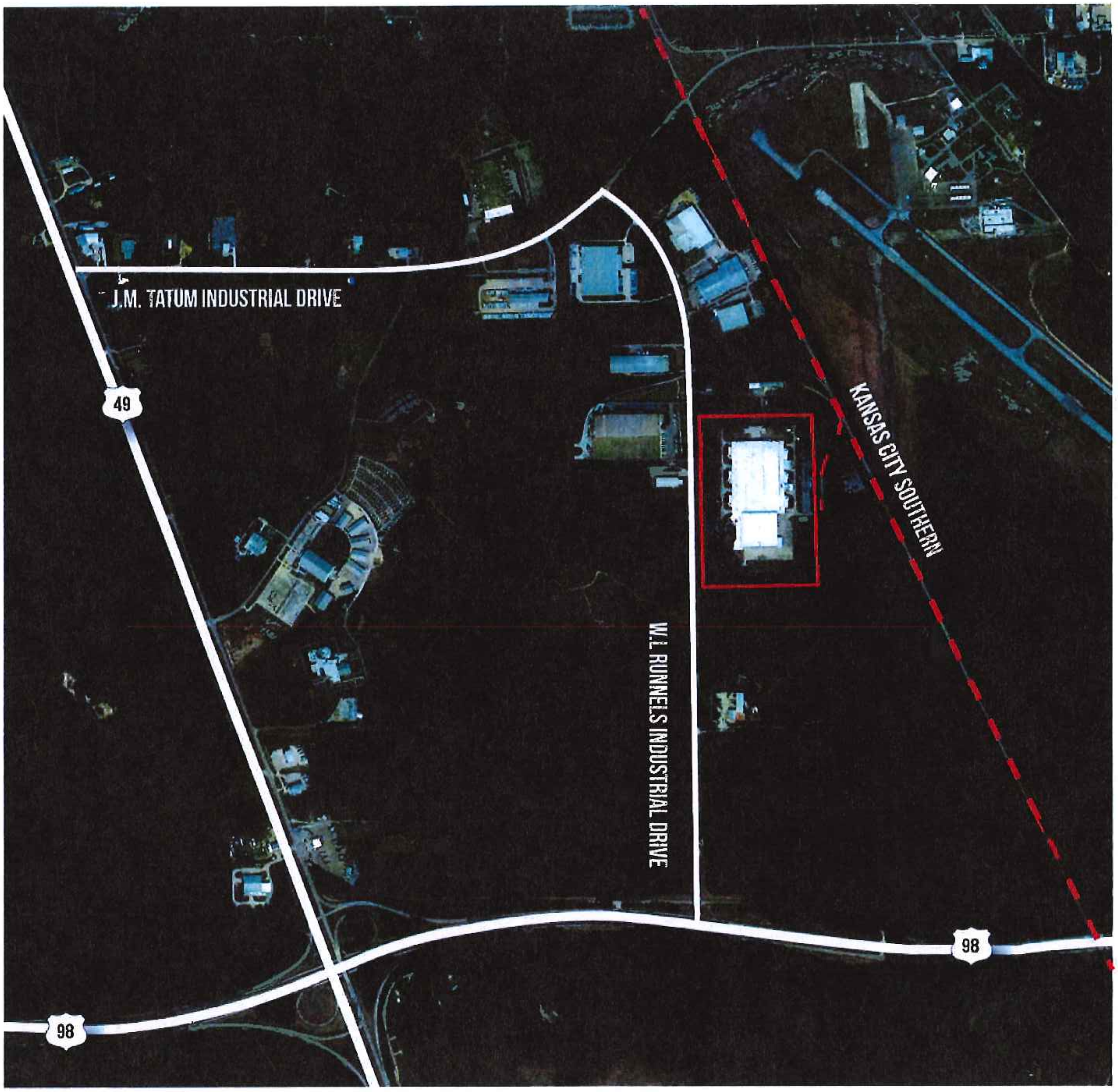
THE CITY OF HATTIESBURG, MISSISSIPPI

By: ______________________
Toby Barker, Mayor

EXHIBIT A

Site Map

BULK INDUSTRIAL BUILDING
Forrest County Industrial Park
Aerial Map



LEGEND

Bulk Industrial Building

EXHIBIT B

Incentives Proposal Summary

INCENTIVES PROPOSAL

PROJECT KOHLER ENGINES

SUMMARY OF ESTIMATED VALUE RECEIVED OVER 10 YEARS

PENDING FINAL APPROVAL FROM LOCAL UNITS OF GOVERNMENT AND MDA

SALES TAX SAVINGS *Upfront tax exemption on building materials and new manufacturing machinery*	
New Equipment	**$60,000**
LOCAL PROPERTY TAX SAVINGS *Property tax exemption on real and personal property and Freeport Warehouse exemption on finished goods inventory*	
Building & Equipment	**$1,642,986**
Inventory (Freeport Warehouse)	**$6,540,120**
ADVANTAGE JOBS REBATE *Cash rebate of 90% of payroll taxes up to 4% of total payroll*	**$2,843,266**
ACE GRANT *Cash grant to offset equipment relocation expense or other qualifying expenses*	**$2,600,000**
LOCAL INFRASTRUCTURE ASSISTANCE *Upgrades to facility entrance and adjacent roadway* **To be paid for by local public and private entities*	**$160,000**
MISSISSIPPI WORKS WORKFORCE TRAINING FUND *This flexible workforce training incentive commits additional funds to cover expenses incurred by the company associated with training new employees*	**$300,000**
TOTAL VALUE	**$14,146,972**

EXHIBIT C

Bulk Industrial Group, LLC Letter

BULK Bulk Industrial Group LLC

The Value Leader in Industrial Real Estate

December 4, 2018

Honorable Toby Barker
Mayor, City of Hattiesburg
P.O. Box 1898
Hattiesburg, MS 39403-1898

Mayor Barker,

Bulk Industrial Group, LLC owns and operates a Class A manufacturing building located at 95 W.L. Runnels Industrial Drive in Hattiesburg, MS and within the Forrest County Industrial Park. Bulk Industrial executives are currently pursuing a lease with the Kohler Company for 302,155 square feet of space within said building.

In the interest of economic development, the City of Hattiesburg, Forrest County, and the Forrest County Industrial Park Commission have made certain commitments for the improvement of public infrastructure including:

1. Restriping of W.L. Runnels Drive near U.S. Highway 98, and

2. Installation of a new curb cut and driveway extension to allow direct access into the office space located along the western side of the Bulk Industrial building.

As part of this project, Bulk Industrial Group, LLC commits to constructing and funding all necessary improvements falling on the company's private property that are associated with the curb cut and driveway extension mentioned above. This aligns with previous communications the company has had with the Area Development Partnership, Forrest County and the City of Hattiesburg.

Bulk Industrial looks forward to continuing our long-standing partnership with the Kohler Company and our local allies in Hattiesburg. Please let me know how I can be of further assistance.

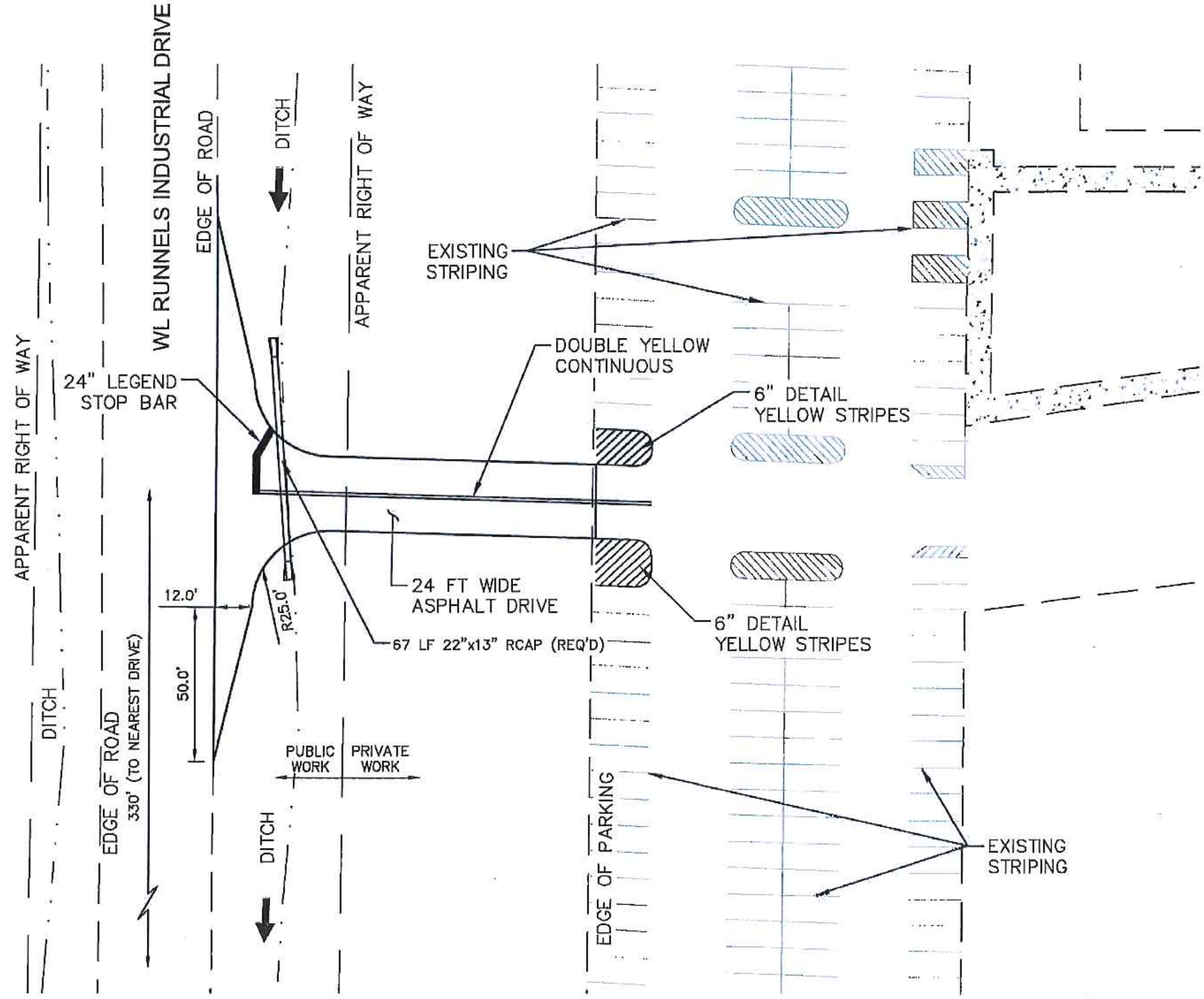
Sincerely,

Todd P. Mendon

Todd P. Mendon, SIOR
Chief Executive Officer
Bulk Industrial Group, LLC.

EXHIBIT D

Infrastructure Upgrades



NOTE:
NOT FOR CONSTRUCTION

PROJECT SITE MAP - PROPOSED DRIVEWAY

WL RUNNELS INDUSTRIAL DRIVE AT OLD SUNBEAM BUILDING

sdw Engineering Progress
301 Second Ave. | Hattiesburg, MS 39401 | (p) 601.544.1821 | (f) 601.544.0501 | sd-w.com

GRAPHIC SCALE
0 20 50 100
(IN FEET)

DATE: 08-06-2018
DWG No.: 16772

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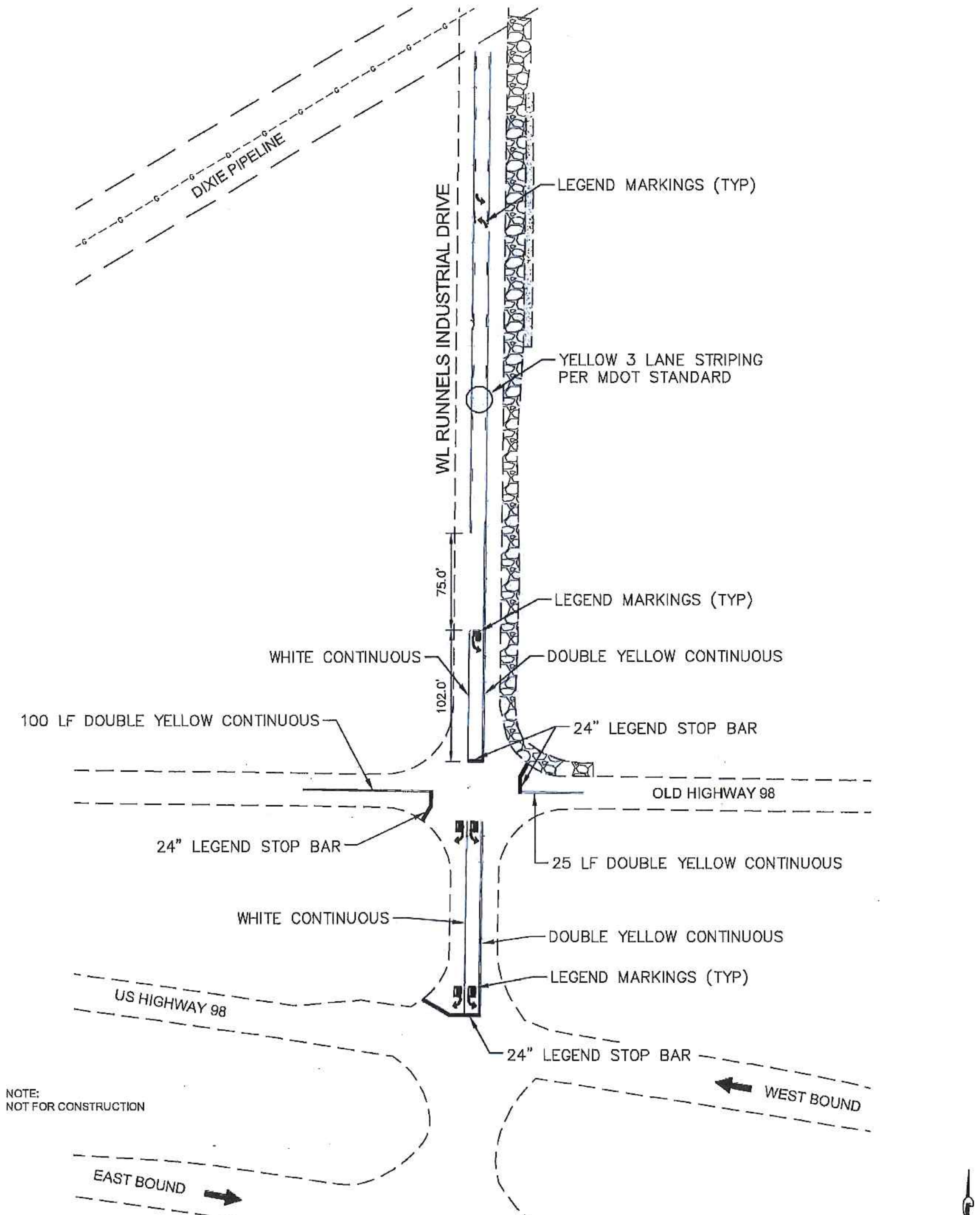

PROJECT SITE MAP - STRIPING

WL RUNNELS INDUSTRIAL DRIVE AT US 98 EAST

GRAPHIC SCALE

(IN FEET)

sdw Engineering Progress

301 Second Ave. | Hattiesburg, MS 39401 | (p) 601.544.1821 | (f) 601.544.0501 | sd-w.com

DATE: 08-06-2018
DWG No.: 16772

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Preliminary Opinion of Probable Costs - Public Work | Project No.: 16772 | Date: 08-23-2018

Striping and Driveway Installation - W.L. Runnels Ind. Dr.

Hattiesburg-Forrest County Industrial Park

ITEM No.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENSION
1	Clearing and Grubbing	1	Lump Sum	$200.00	$200.00
2	Unclassified Excavation	5	Cu.Yd.	$8.00	$40.00
3	Borrow Excavation, LVM, (Cl 9, Gr C)	85	Cu.Yd.	$15.00	$1,275.00
4	Temporary Grassing	1	Lump Sum	$600.00	$300.00
5	Temporary Erosion Control Measures, Per Plans	1	Lump Sum	$1,000.00	$1,000.00
6	Granular Material (LVM) (Class 9, Group B)	25	Cu.Yd.	$12.00	$300.00
7	Crushed Aggregate (610)	136	Tons	$50.00	$6,800.00
8	9.5 mm, ST, Asphalt Pavement	23	Tons	$150.00	$3,450.00
9	19 mm, ST, Asphalt Pavement	70	Tons	$150.00	$10,500.00
10	22"x13" RCAP, Plastic Gaskets, Bedding	68	Lin. Ft.	$40.00	$2,720.00
11	22"x13" RCAP FES, Plastic Gaskets, Bedding	2	Each	$2,500.00	$5,000.00
12	6" Thermoplastic Detail Traffic Stripe, Yellow	1,680	Lin. Ft.	$2.50	$4,200.00
13	6" Thermoplastic Detail Traffic Stripe, White	500	Lin. Ft.	$2.50	$1,250.00
14	Thermoplastic Legend, White (6"Equiv)	540	Lin. Ft.	$2.50	$1,350.00
15	Thermoplastic Legend, White	225	Sq. Ft.	$10.00	$2,250.00
16	Raised Reflective Pavement Markers, Yellow	100	Each	$15.00	$1,500.00
17	Raised Reflective Pavement Markers, Red/White	20	Each	$15.00	$300.00
18	Standard Roadside Signs, Sheet Aluminum, 0.125" Thickness	9	Sq. Ft.	$25.00	$225.00
19	Steel U-Section Posts, 2.0 Lbs/Ft	15	Lin. Ft.	$8.00	$120.00
20	Grassing	1,200	Sq. Ft.	$10.00	$12,000.00
21	Construction Staking	1	Lump Sum	$1,250.00	$1,250.00
22	Maintenance of Traffic	1	Lump Sum	$5,000.00	$5,000.00
23	Mobilization	1	Lump Sum	$5,000.00	$5,000.00

	Project Construction Subtotal	**$66,030.00**
25%	Contingencies	$16,507.50
	Project ConcstructionTotal	**$82,537.50**
	Design Engineering	$9,904.50
	Const Engineering & Inspection	$6,603.00
	Project Grand Total	**$99,045.00**

Preliminary Opinion of Probable Costs - Private Work | Project No.: 16772 | Date: 08-23-2018

Striping and Driveway Installation - W.L. Runnels Ind. Dr.

Hattiesburg-Forrest County Industrial Park

ITEM No.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENSION
1	Clearing and Grubbing	1	Lump Sum	$800.00	$800.00
2	Removal of Striping	50	Lin. Ft.	$2.00	$100.00
3	Unclassified Excavation	5	Cu.Yd.	$8.00	$40.00
4	Borrow Excavation, LVM, (Cl 9, Gr C)	65	Cu.Yd.	$15.00	$975.00
5	Temporary Grassing	1	Lump Sum	$900.00	$450.00
6	Temporary Erosion Control Measures, Per Plans	1	Lump Sum	$1,500.00	$1,500.00
7	Granular Material (LVM) (Class 9, Group B)	135	Cu.Yd.	$12.00	$1,620.00
8	Crushed Aggregate (610)	105	Tons	$50.00	$5,250.00
9	9.5 mm, ST, Asphalt Pavement	18	Tons	$150.00	$2,700.00
10	19 mm, ST, Asphalt Pavement	52	Tons	$150.00	$7,800.00
11	6" Thermoplastic Detail Traffic Stripe, Yellow	520	Lin. Ft.	$2.50	$1,300.00
12	Grassing	1,200	Sq. Ft.	$10.00	$12,000.00
13	Construction Staking	1	Lump Sum	$1,250.00	$1,250.00
14	Mobilization	1	Lump Sum	$3,500.00	$3,500.00
				Project Construction Subtotal	**$39,285.00**
		25%		Contingencies	$9,821.25
				Project ConcstructionTotal	**$49,106.25**
				Design Engineering	$5,892.75
				Const Engineering & Inspection	$3,928.50
				Project Grand Total	**$58,927.50**

EXHIBIT E

MDA Commitment Letter
August 28, 2018

STATE OF MISSISSIPPI
PHIL BRYANT, GOVERNOR
MISSISSIPPI DEVELOPMENT AUTHORITY
GLENN MCCULLOUGH, JR.
EXECUTIVE DIRECTOR

August 28, 2018

Mr. Jerry L. Stone
Plant Manager - Hattiesburg
Kohler Engines
182 JM Tatum Industrial Drive
Hattiesburg, Mississippi 39401

Dear Mr. Stone:

The Mississippi Development Authority (MDA) would like to convey its sincere gratitude to Kohler Engines for considering Mississippi for the relocation of their engine manufacturing facility. Projects like this are extremely important to the continued growth and prosperity of our State. As a result, MDA will provide the following to assist with your project:

ACE Grant – A grant of up to $2,600,000 will be made available to the local economic development authority to assist with the relocation of equipment and other eligible expenses, as approved by MDA. The company will have three years to create 250 new, full-time jobs and must maintain the new employment level for a two-year maintenance period.

MS Works Fund – A grant will be provided for this project in the amount of up to $300,000. This grant is administered by MDA for job creation projects and compliments Mississippi's existing workforce programs. The funds are flexible and may be used to offer additional post-employment training at a community college or to offset training conducted internally by a company. Travel expenditures directly related to training, as well as training-related equipment may also be covered.

These monies are being made available based upon the commitment that your investment will be at least $13,600,000 and Kohler will create at least 250 new, full-time positions in Forrest County. These 250 jobs are in addition to your existing workforce of 350 employees. This financial offer is contingent upon MDA's satisfactory financial and project due diligence review. It is also understood that the local entity and the business must meet minimum requirements set forth in state statutes and the rules and regulations of this program. If the number of jobs or costs of the infrastructure improvements change, MDA will want to discuss the new proposal before there is a final commitment of funds. In compliance with MDA's policy, we will hold the funds for 90 days. The deadline will be November 28, 2018.

We look forward to working with you in support of this project. If you have any questions, please contact our Project Manager Ross Ivey. Ross can be reached at 601-359-2900 or at rivey@mississippi.org.

Very truly yours,

Glenn McCullough, Jr.

GM:ri

cc: Todd Jackson, Executive Vice President, Area Development Partnership