



**Tuesday, September 1, 2020
4:00 PM**

**City Council
Special Called Meeting Agenda**

**Jackie Dole Community Center
220 W. Front Street**

Call to Order

Declaration of Special Called Meeting

Agenda Items

1. **2020-646** Approve the minutes for the August 3 & 4, 2020 meetings of the City Council.

2. **2020-641** Approve a limited scope of Engagement between City of Hattiesburg and Baker Donelson, Bearman, Caldwell & Berkowitz, PC to provide emergency support services to the City in assisting with eligibility and compliance requirements for funding managed by FEMA, HUD, the CARES Act and other eligible sources as related to the COVID-19 Pandemic and authorize the Mayor to execute the same.

3. **2020-643** Approve Professional Services Agreement between City of Hattiesburg and Hattiesburg Clinic Professional Association to conduct and operate a public COVID-19 testing program at the C.E. Roy Community Center and authorize the Mayor to execute the same.

Meeting Recess



Memorandum

To: Mayor Toby Barker and Members of City Council

From: Ronda Cole, Clerk of Council

cc:

Date: Tuesday, September 1, 2020

Re: Approve the minutes for the August 3 & 4, 2020 meetings of the City Council.
File Number: 2020-646
Minute Book #

Summary

According to Miss. Code Ann. § 21-15-33, "the minutes of every municipality must be adopted and approved by a majority of all the members of the governing body of the municipality at the next regular meeting or within thirty (30) days of the meeting thereof, whichever occurs first....."

Recommendation Statement

I recommend approval of the minutes.

Please place this on the September 1, 2020 City Council meeting for consideration.

Published Agenda



**Monday, August 3, 2020
4:00 PM**

**City Council
Monday Meeting Agenda**

**Jackie Dole Community Center
220 W. Front Street**

Call to Order

Public Hearing

1. 2020-488
- Hold Public Hearing to determine if certain properties are in such a state of uncleanness so as to be a menace to the health and safety of the community, according to the provision of MS Code 1972, Section 21-19-11.

- Attachments:
- Hold Public Hearing-Unsafe Properties 8 3 2020
1. 3403 Pearl Street
2. 111 Midway Avenue
3. 1407 Deason Avenue
4. 1121 Cherry St
5. 607 Graymont Avenue
6. 807 Railroad St
7. 100 South St
8. 307 4th Street
9. 725 Barkley Rd
10. 1103 Johnston St

Agenda Review

Citizens' Forum

Budget Presentations

1. 2020-535
- Fire Department, presented by Chief Sherrocko Stewart.
2. 2020-534
- Water Department, presented by Alan Howe.
3. 2020-533
- Urban Development Department, presented by Andrew Ellard.

Work Session

1. 2020-543
- Hazard Mitigation Plan Update, presented by Administration.
2. 2020-538
- Voting Precincts, presented by Councilman Jeffrey George.
3. 2020-537
- Code Enforcement, presented by Councilwoman Deborah Delgado.
4. 2020-536
- Employee pay, presented by Councilwoman Deborah Delgado.
5. 2020-541
- Historic properties, presented by Council Vice President Mary Dryden.

Meeting Recess

Call to Order

BE IT REMEMBERED that the Hattiesburg City Council held a **Public Hearing on unsafe properties** at 4:00 p.m. Monday, August 3, 2020, in Council Chambers at City Hall, pursuant to order adopted July 7, 2020,

at Minute Book 2020 Page 156, to determine if the following properties are in such a state of uncleanliness so as to be a menace to the health and safety of the community.

Those present included Mayor Toby Barker and members of the City Council Jeffrey George, Ward 1; Deborah Delgado, Ward 2; Carter Carroll, Ward 3; Mary Dryden, Ward 4; and Nicholas Brown, Ward 5. Others in attendance included Director of Administration/City Clerk, Kermas Eaton; City Attorney, Randy Pope; Clerk of Council, Ronda S. Cole; Deputy Clerk of Council, Lisa Luu; City staff members; media; and the public.

Council President Carroll called the meeting to order and explained the procedures.

Public Hearing

1. **2020-488** Hold Public Hearing to determine if certain properties are in such a state of uncleanliness so as to be a menace to the health and safety of the community, according to the provision of MS Code 1972, Section 21-19-11.

Attachments: Hold Public Hearing-Unsafe Properties 8-3-2020

1. 3403 Pearl Street
2. 111 Midway Avenue
3. 1407 Deason Avenue
4. 607 Graymont Avenue
5. 807 Railroad St
6. 100 South St
7. 307 4th Street
8. 725 Barkley Rd
9. 1103 Johnston St

Code Enforcement Division Manager Wiley Quinn presented the properties to be considered. Mr. Quinn recommended the that the Council adopt resolutions determining the properties are in such a state of uncleanliness so as to be a menace to the health and safety of the community, providing a specified period of time to remove the violations, and declaring the City's intent to take action to clear violations and charge the cost plus penalty against the property if the violations are not resolved in the specified period of time. He recommended resolutions allowing homeowners 15 days to resolve violations.

Council President Carroll called out each unsafe property listed and asked if there were any citizens who wished to speak on behalf of the property called.

Council Member Delgado asked for property 1121 Cherry Street be removed from the list.

- Bernard Booth spoke on behalf of property 307 4th Street (Case #9).
- Nathaniel Hibbler, property owner of 100 South Street (Case #8) later during the Council meeting (5:03 p.m.).

There were no other citizens present who wished to address the Council regarding properties listed for the public hearing.

By unanimous consent, Council President Carroll **recessed the public hearing at 4:13 p.m. and proceeded with the Agenda Review.**

Agenda Review

Council President Carroll proceeded with the Agenda Review.

Following discussion of agenda items, Council President Carroll closed the Agenda Review.

Citizens' Forum

Council Vice President Dryden proceeded with the Citizens' Forum.

She stated the procedures and invited members of the public to speak.

There were no citizens present who wished to address the Council.

Council Vice President Dryden closed the Citizen Forum.

Budget Presentations

Council President Carroll proceeded with the Budget Presentations.

1. **2020-535** Fire Department, presented by Chief Sherrocko Stewart.

Attachments: HFD Budget Presentation, 8-3-2020

2. **2020-534** Water Department, presented by Alan Howe.

Attachments: Water & Sewer Budget Presentation, 8-3-2020

Council President Carroll re-opened the Public Hearing at 5:03 p.m. for Mr. Nathaniel Hibbler, property owner of 100 South Street, and Attorney Dexter Woodberry to speak on behalf of the unsafe property case number 8.

Council President Carroll **closed the Public Hearing at 5:27 p.m. and proceeded with the budget presentations.**

3. **2020-533** Urban Development Department, presented by Andrew Ellard.

Attachments: Urban Development Budget Presentation, 8-3-2020

Work Session

Council President Carroll proceeded with the Work Session, which included:

1. **2020-543** Hazard Mitigation Plan Update, presented by Administration.
2. **2020-538** Voting Precincts, presented by Councilman Jeffrey George.
3. **2020-537** Code Enforcement, presented by Councilwoman Deborah Delgado.
4. **2020-536** Employee pay, presented by Councilwoman Deborah Delgado.
5. **2020-541** Historic properties, presented by Council Vice President Mary Dryden.

Attachments: A Property Owner's Guide - Hattiesburg Conservation District Brochure

Meeting Recess

Council President Carrol declared **the meeting recessed at 6:28 p.m., this 3rd day of August, 2020**, by unanimous consent, until the 4th day of August, 2020.

ATTEST:

APPROVE:

Clerk of Council

Council President

ATTEST AND CERTIFY:

APPROVE:

City Clerk

Mayor

Published Agenda



**Tuesday, August 4, 2020
5:00 PM**

**City Council
Tuesday Meeting Agenda**

**Jackie Dole Community Center
220 W. Front Street**

Call to Order

Call to Prayer and Pledge of Allegiance

Presentation Agenda

Agenda Adjustments

Add Routine Item #12

- 12. 2020-545** Authorize the publication of Request for Proposals for professional services related to disaster and pandemic response cost recovery and related grant and project management services associated with impacts from the ongoing COVID-19 Pandemic.

POLICY AGENDA

- | | | |
|------------|-----------------|--|
| 1. | 2020-508 | Approve the minutes for the July 20 and 21, 2020 meetings of the City Council. |
| 2. | 2020-491 | Adopt Resolutions condemning the following properties as unclean and a menace to the health and safety of the community. |
| 3. | 2020-520 | Adopt a Resolution setting Public Hearing on Tuesday, September 8, 2020 at 4:00 p.m. in the Jackie Dole Sherrill Community Center to determine if certain properties are in such a state of uncleanliness so as to be a menace to the health and safety of the community, according to the provision of MS Code 1972, Section 21-19-11. |
| 4. | 2020-529 | Adopt a Resolution calling for a Special Election to be held on August 25, 2020 in the City of Hattiesburg for the Approval or Disapproval granting Non-Exclusive Electric Franchise to Mississippi power Company. |
| 5. | 2020-511 | Adopt a Resolution declaring equipment surplus and authorize the disposal or sale of said equipment; authorize removal of equipment from the City inventory of the Department of Urban Development. |
| 6. | 2020-512 | Adopt a Resolution declaring certain vehicles as surplus (per attached memo) and authorize sale of said vehicles at auction and remove from the City's inventory of the Department of Urban Development. |
| 7. | 2020-525 | Adopt a Resolution authorizing Requisition No. 69 from the Project Fund Construction Account in connection with a certain loan agreement dated August 18, 2016, by and between the Mississippi Development Bank and the City of Hattiesburg. |
| 8. | 2020-505 | Approve Supplemental Agreement No. 2 with Suncoast Infrastructure, Inc. for the Cured In Place Pipe Sewer Project In Various Locations Project to add work areas and calendar days to the existing project for a contract increase of \$291,918.20 and authorize the Mayor to execute in triplicate. |
| 9. | 2020-515 | Approve Payment Application No. 3 and Final Payment to Wildstone Construction Services, LLC. in the amount of \$37,941.04 for construction services for the Hattiesburg Bus Stops project; Approve final acceptance of said project; and Authorize Publication of the Notice of Final Settlement of contract of said project. |
| 10. | 2020-524 | Approve Agreement with the Natural Resources Conservation Services for an Emergency Watershed Protection (EWP) Project at Creekside Manor for a total cost of \$67,000.00 of which \$50,250.00 is Federally funded and \$16,750.00 is City funded and authorize the Mayor to execute any and all documents required for the project pre-application, application, and other required documents. |
| 11. | 2020-504 | Approve Joint-Funding Agreement for the period of October 1, 2020 to September 30, 2021 to continue the cooperative program between the U.S. Geological Survey (USGS) and the City of Hattiesburg for the operation and maintenance of the Bouie River Flood Monitoring Site at Glendale Avenue, and for hydrologic modeling and development of inundation maps for the Leaf River, with total cost to the City of \$6,500.00 and authorize the Mayor to execute in duplicate. |
| 12. | 2020-510 | Approve Cancellation of Deed of Trust from Karen Clark, Grantor, for property at 18 Annie Christie Drive, to City of Hattiesburg, Beneficiary, recorded in the Deed of Trust Book 1700 |

at Page 0503-0506 in the office of the Chancery Clerk of Forrest County, Mississippi, from a HOME-eligible buyer and authorize the Mayor to execute the same.

13. **2020-514** Approve renewal of contract (for one year) with Debristech, LLC for Debris Monitoring services in the event of a disaster and authorize the Mayor to execute in duplicate.
14. **2020-540** Approve renewal of Maintenance Agreement between the City of Hattiesburg and Pitney Bowes, Inc for a mail machine located in City Hall and authorize the Mayor to execute the same.
15. **2020-527** Approve a Service Agreement between the City of Hattiesburg and Harvard Pest Control for pest treatment at the Water Billing Office, in an amount not to exceed \$900.00 and authorize the Mayor to execute the same.
16. **2020-542** Approve Agreement between Mississippi State Fire Academy (MSFA) and the Hattiesburg Fire Department to provide the course for the NFPA 1001-I-II F and authorize the Mayor to execute the same.
17. **2020-530** Approve revised City of Hattiesburg Employee Handbook.
18. **2020-531** Approve the State Holiday Schedule as the City's holidays for the fiscal year 2020-2021 in accordance with MS Code 3-3-7, per attached list.
19. **2020-516** Approve and authorize issuance of manual checks for CDBG Program Claims for 303 JC Killingsworth Drive {Entitlement CDBG}.
20. **2020-519** Ratify and confirm the Mayor's appointment of Bernard Green (W3) to the Hattiesburg Board of Adjustment for a three-year term beginning August 8, 2020 and ending August 7, 2023.
21. **2020-518** Acknowledge bids received July 23, 2020 for the Hardy Street and Concart Street Drainage and Sidewalk Improvements Project and accept the bid from Gulf South Construction in the amount of \$355,925.80 for the Base Bid and Additive Alternate No. 1; Authorize Mayor to execute contracts upon preparation.
22. **2020-517** Acknowledge bids received July 23, 2020 for the Water Improvements Along Lincoln Road Project and accept the bid from C. B. Developers, Inc. in the amount of \$253,448.00; Authorize Mayor to execute contracts upon preparation.
23. **2020-507** Acknowledge bids received July 9, 2020 for the C.E. Roy Pathway Project and accept the bid from Gulf South Construction in the amount of \$178,118.73 for the Base Bid and Additive Alternate No. 1; Authorize Mayor to execute contracts upon preparation.
24. **2020-523** Acknowledge bids received July 23, 2020 for the Vehicular Wayfinding and Parking Signage Project and accept the bid from RJM McQueen Contracting, Inc. in the amount of \$69,097.74; Authorize Mayor to execute contracts upon preparation.

ROUTINE AGENDA

1. **2020-493** Authorize submission of a grant application to the National Endowment for the Arts (NEA) Grants for Arts Projects Program for funding to support the creation and installation of an outdoor sculpture, for a total project cost of \$200,000 (\$50,000 federal share and \$150,000 local share).
2. **2020-492** Authorize submission of a grant application to the Mississippi Arts Commission (MAC) Rapid Response Minigrant Program for funding to continue free virtual programming in the Fall of 2020 with a 16-week public art workshop. The total project cost is \$2,000 (\$1,000 state share and \$1,000 local share).
3. **2020-494** Acknowledge receipt of a Drainage Release, executed by Terry L. Garner and Warren T. Hankins, for 4127 Lincoln Road.
4. **2020-497** Acknowledge Bids received July 23, 2020 in a reverse auction for Supervisory Control and Data Acquisition Units for the City Of Hattiesburg Water Department; Accept the bid from MD Electric in the amount of \$243,312.65.
5. **2020-509** Acknowledge receipt of the two-quote docket as provided for in 31-7-13(b) of the Mississippi Code of 1972
6. **2020-503** Approve and authorize publication of a Request for Proposals for service related to the provision of Job Access Reverse Commute services for Hub City Transit.
7. **2020-513** Approve Plans and Specifications for the Hardy Street Paving Project (21st Avenue to West Pine Street) and authorize advertisement for bids.
8. **2020-522** Approve Plans and Specifications for the Roadway Improvements on Highway 49, Camp Street, Adeline Street, and Mamie Street Project, Mississippi Department of Transportation State Aid Road Construction Project No. DECD-0018(35) BO and authorize advertisement for bids contingent upon Office of State Aid and Road Construction approval.
9. **2020-539** Approve Specifications and Authorize Publication for one (1) Twenty Yard Rear Loading Refuse Collection Truck for the City of Hattiesburg Public Works Department.
10. **2020-496** Approve the sale of grave spaces, per attached Memo's, Receipts, and Deeds.
11. **2020-526** Approve claims docket for the period ending July 31, 2020.

- 12.2020-545
- Authorize the publication of Request for Proposals for professional services related to disaster and pandemic response cost recovery and related grant and project management services associated with impacts from the ongoing COVID-19 Pandemic.

In Memoriam:

- Mr. Lance Sanderford
- Representative Gene Saucier
- Senator Bob Dearing
- Mr. Alvin Eaton
- Mr. Ryan Locklear
- Ms. Rebecca Poston
- Ms. Flora Lofton Anderson
- Ms. Catherine Calbert Jones
- Mr. James “Bill” Watts

Meeting Adjourn

Call to Order

BE IT REMEMBERED that the **regular meeting of the Hattiesburg City Council was held at 5:00 p.m. Tuesday, August 4, 2020**, in Council Chambers at City Hall.

Those present included Mayor Toby Barker and members of the City Council Jeffrey George, Ward 1; Deborah Delgado, Ward 2 (via teleconference); Carter Carroll, Ward 3; Mary Dryden, Ward 4; and Nicholas Brown, Ward 5. Others in attendance included City Attorney, Randy Pope; Clerk of Council, Ronda S. Cole; Deputy Clerk of Council, Lisa Luu Jolly; City staff members; media; and the public.

Council President Carroll Called the meeting to order.

Call to Prayer and Pledge of Allegiance

The prayer was given by Council Member Brown.

The Pledge of Allegiance was led by Council President Carroll.

Presentation Agenda

The PRESENTATION AGENDA came before the Council.

There were no presentations at this time.

Agenda Adjustments

A MOTION was made by Council Member George and seconded by Council Member Brown to add Routine Agenda Item #12 at the request of the Administration as follows:

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

12. **2020-545** Authorize the publication of Request for Proposals for professional services related to disaster and pandemic response cost recovery and related grant and project management services associated with impacts from the ongoing COVID-19 Pandemic.

POLICY AGENDA

The POLICY AGENDA came before the Council.

1. **2020-508** Approve the minutes for the July 20 and 21, 2020 meetings of the City Council.

Attachments: 7-20-2020 AR, BP, WS Mins.
7-21-2020 Mins.

A MOTION was made by Council Member Jeffrey George and seconded by Council Member Nicholas Brown to Approve the minutes for the July 20 and 21, 2020 meetings of the City Council.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

2. **2020-491** Adopt Resolutions condemning the following properties as unclean and a menace to the health and safety of the community.

Attachments: Adopt Resolution to Condemn 8 4 2020 v2 example correction
1. 3403 Pearl St.
2. 111 Midway Avenue
3. 1407 Deason Avenue
4. 1121 Cherry St Corrected
5. 607 Graymont Avenue
6. 807 Railroad Sr.
7. 100 South St.
8. 307 4th Avenue
9. 725 Barkley Rd.
10. 1103 Johnston St.

A MOTION was made by Council Member George and seconded by Council Vice President Dryden to Adopt Resolutions condemning the following properties as unclean and a menace to the health and safety of the community.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

3. **2020-520** Adopt a Resolution setting Public Hearing on Tuesday, September 8, 2020 at 4:00 p.m. in the Jackie Dole Sherrill Community Center to determine if certain properties are in such a state of uncleanliness so as to be a menace to the health and safety of the community, according to the provision of MS Code 1972, Section 21-19-11.

Attachments: Set Public Hearing Unsafe Properties Resolution 9-8-2020
Request to Set Public Hearing-CE 9-8-2020

A MOTION was made by Council Member George and seconded by Council Vice President Dryden to Adopt a Resolution setting Public Hearing on Tuesday, September 8, 2020 at 4:00 p.m. in the Jackie Dole Sherrill Community Center to determine if certain properties are in such a state of uncleanliness so as to be a menace to the health and safety of the community, according to the provision of MS Code 1972, Section 21-19-11.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

4. **2020-529** Adopt a Resolution calling for a Special Election to be held on August 25, 2020 in the City of Hattiesburg for the Approval or Disapproval granting Non-Exclusive Electric Franchise to Mississippi power Company.

Attachments: Resolution authorizing special election

A MOTION was made by Council Vice President Dryden and seconded by Council Member George to Adopt a Resolution calling for a Special Election to be held on August 25, 2020 in the City of Hattiesburg for the Approval or Disapproval granting Non-Exclusive Electric Franchise to Mississippi power Company.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

5. **2020-511** Adopt a Resolution declaring equipment surplus and authorize the disposal or sale of said equipment; authorize removal of equipment from the City inventory of the Department of Urban Development.

Attachments: Aug 2020 surplus list
SURPLUS RESOLUTION Aug 2020

A MOTION was made by Council Vice President Dryden and seconded by Council Member George to Adopt a Resolution declaring equipment surplus and authorize the disposal or sale of said equipment; authorize removal of equipment from the City inventory of the Department of Urban Development.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

6. **2020-512** Adopt a Resolution declaring certain vehicles as surplus (per attached memo) and authorize sale of said vehicles at auction and remove from the City's inventory of the Department of Urban Development.

Attachments: Vehicle SURPLUS RESOLUTION Aug 2020
Vehicle Surplus Memo - Aug 2020

A MOTION was made by Council Member Brown and seconded by Council Member George to Adopt a Resolution declaring certain vehicles as surplus (per attached memo) and authorize sale of said vehicles at auction and remove from the City's inventory of the Department of Urban Development.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

7. **2020-525** Adopt a Resolution authorizing Requisition No. 69 from the Project Fund Construction Account in connection with a certain loan agreement dated August 18, 2016, by and between the Mississippi Development Bank and the City of Hattiesburg.

Attachments: 2016 Bond Resolution No. 69
Project Resolution Requisition 2016 Bonds No. 69

A MOTION was made by Council Member George and seconded by Council Vice President Dryden to Adopt a Resolution authorizing Requisition No. 69 from the Project Fund Construction Account in connection with a certain loan agreement dated August 18, 2016, by and between the Mississippi Development Bank and the

City of Hattiesburg.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 8. 2020-505** Approve Supplemental Agreement No. 2 with Suncoast Infrastructure, Inc. for the Cured In Place Pipe Sewer Project In Various Locations Project to add work areas and calendar days to the existing project for a contract increases of \$291,918.20 and authorize the Mayor to execute in triplicate.

Attachments: 2619_001

A MOTION was made by Council Member George and seconded by Council Vice President Dryden to Approve Supplemental Agreement No. 2 with Suncoast Infrastructure, Inc. for the Cured In Place Pipe Sewer Project In Various Locations Project to add work areas and calendar days to the existing project for a contract increase of \$291,918.20 and authorize the Mayor to execute in triplicate.

Following discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 9. 2020-515** Approve Payment Application No. 3 and Final Payment to Wildstone Construction Services, LLC. in the amount of \$37,941.04 for construction services for the Hattiesburg Bus Stops project; Approve final acceptance of said project; and Authorize Publication of the Notice of Final Settlement of contract of said project.

Attachments: Notice of Final Settlement - Hattiesburg Bus Stops project
Final Pay Application and Closeout Documents

A MOTION was made by Council Member George and seconded by Council Vice President Dryden to Approve Payment Application No. 3 and Final Payment to Wildstone Construction Services, LLC. in the amount of \$37,941.04 for construction services for the Hattiesburg Bus Stops project; Approve final acceptance of said project; and Authorize Publication of the Notice of Final Settlement of contract of said project.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 10. 2020-524** Approve Agreement with the Natural Resources Conservation Services for an Emergency Watershed Protection (EWP) Project at Creekside Manor for a total cost of \$67,000.00 of which \$50,250.00 is Federally funded and \$16,750.00 is City funded and authorize the Mayor to execute any and all documents required for the project pre-application, application, and other required documents.

Attachments: City of Hattiesburg 2020 Agreement (1) Pre-Award Package
SF-424_12-31-22 Hattiesburg (003)

A MOTION was made by Council Vice President Dryden and seconded by Council Member George to Approve Agreement with the Natural Resources Conservation Services for an Emergency Watershed Protection (EWP) Project at Creekside Manor for a total cost of \$67,000.00 of which \$50,250.00 is Federally funded and \$16,750.00 is City funded and authorize the Mayor to execute any and all documents required for the project pre-application, application, and other required documents..

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 11. 2020-504** Approve Joint-Funding Agreement for the period of October 1, 2020 to September 30, 2021 to continue the cooperative program between the U.S. Geological Survey (USGS) and the City of Hattiesburg for the operation and maintenance of the Bouie River Flood Monitoring Site at Glendale Avenue, and for hydrologic modeling and development of inundation maps for the Leaf River, with total cost to the City of \$6,500.00 and authorize the Mayor to execute in duplicate.

Attachments: 21MLJFAMSDA088_00.City of Hattiesburg

A MOTION was made by Council Member George and seconded by Council Vice President Dryden to Approve Joint-Funding Agreement for the period of October 1, 2020 to September 30, 2021 to continue the cooperative program between the U.S. Geological Survey (USGS) and the City of Hattiesburg for the operation and maintenance of the Bouie River Flood Monitoring Site at Glendale Avenue, and for hydrologic modeling and development of inundation maps for the Leaf River, with total cost to the City of \$6,500.00 and authorize the Mayor to execute in duplicate..

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 12. 2020-510** Approve Cancellation of Deed of Trust from Karen Clark, Grantor, for property at 18 Annie Christie Drive, to City of Hattiesburg, Beneficiary, recorded in the Deed of Trust Book 1700 at Page 0503-0506 in the office of the Chancery Clerk of Forrest County, Mississippi, from a HOME-eligible buyer and authorize the Mayor to execute the same.

Attachments: Cancellation of Deed of Trust Karen Clark 8.4.2020

A MOTION was made by Council Member George and seconded by Council Member Brown to Approve Cancellation of Deed of Trust from Karen Clark, Grantor, for property at 18 Annie Christie Drive, to City of Hattiesburg, Beneficiary, recorded in the Deed of Trust Book 1700 at Page 0503-0506 in the office of the Chancery Clerk of Forrest County, Mississippi, from a HOME-eligible buyer and authorize the Mayor to execute the same.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 13. 2020-514** Approve renewal of contract (for one year) with Debristech, LLC for Debris Monitoring services in the event of a disaster and authorize the Mayor to execute in duplicate.

Attachments: Debris Monitoring Renewal #1 - Debris Tech

A MOTION was made by Council Member George and seconded by Council Vice President Dryden to Approve renewal of contract (for one year) with Debristech, LLC for Debris Monitoring services in the event of a disaster and authorize the Mayor to execute in duplicate.

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

Yeas: 3 - George, Carroll and Dryden

Nays: 2 - Delgado (via teleconference) and Brown

- 14. 2020-540** Approve renewal of Maintenance Agreement between the City of Hattiesburg and Pitney Bowes, Inc. for a mail machine located in City Hall and authorize the Mayor to execute the same.

Attachments: PB Agreement

A MOTION was made by Council Member George and seconded by Council Vice President Dryden to Approve renewal of Maintenance Agreement between the City of Hattiesburg and Pitney Bowes, Inc for a mail machine located in City Hall and authorize the Mayor to execute the same.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 15. 2020-527** Approve a Service Agreement between the City of Hattiesburg and Harvard Pest Control for pest treatment at the Water Billing Office, in an amount not to exceed \$900.00 and authorize the Mayor to execute the same.

Attachments: Havard-Water Billing Office Contract

A MOTION was made by Council Member George and seconded by Council Vice President Dryden to Approve a Service Agreement between the City of Hattiesburg and Harvard Pest Control for pest treatment at the Water Billing Office, in an amount not to exceed \$900.00 and authorize the Mayor to execute the same.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 16. 2020-542** Approve Agreement between Mississippi State Fire Academy (MSFA) and the Hattiesburg Fire Department to provide the course for the NFPA 1001-I-II F and authorize the Mayor to execute the same.

Attachments: Academy Contract

A MOTION was made by Council Vice President Dryden and seconded by Council Member George to Approve Agreement between Mississippi State Fire Academy (MSFA) and the Hattiesburg Fire Department to provide the course for the NFPA 1001-I-II F and authorize the Mayor to execute the same.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 17. 2020-530** Approve revised City of Hattiesburg Employee Handbook.

Attachments: employee handbook for adoption August 2020

A MOTION was made by Council Member Brown and seconded by Council Member George to TABLE the revised City of Hattiesburg Employee Handbook until next Council meeting, August 18, 2020.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 18. 2020-531** Approve the State Holiday Schedule as the City's holidays for the fiscal year 2020-2021 in

accordance with MS Code 3-3-7, per attached list.

Attachments: 2020-2021 holiday schedule

A MOTION was made by Council Member George and seconded by Council Vice President Dryden to Approve the State Holiday Schedule as the City's holidays for the fiscal year 2020-2021 in accordance with MS Code 3-3-7, per attached list.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 19. 2020-516** Approve and authorize issuance of manual checks for CDBG Program Claims for 303 JC Killingsworth Drive {Entitlement CDBG}.

Attachments: Memo 2 8.04.20
Hollimon_08042020_update

A MOTION was made by Council Member Brown and seconded by Council Member George to Approve and authorize issuance of manual checks for CDBG Program Claims for 303 JC Killingsworth Drive {Entitlement CDBG}.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 20. 2020-519** Ratify and confirm the Mayor's appointment of Bernard Green (W3) to the Hattiesburg Board of Adjustment for a three-year term beginning August 8, 2020 and ending August 7, 2023.

Attachments: Resume - BG as of 7.21.2020
Data Sheet BOA Bernard Green 2020

A MOTION was made by Council Member George and seconded by Council Member Brown to Ratify and confirm the Mayor's appointment of Bernard Green (W3) to the Hattiesburg Board of Adjustment for a three-year term beginning August 8, 2020 and ending August 7, 2023.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 21. 2020-518** Acknowledge bids received July 23, 2020 for the Hardy Street and Concart Street Drainage and Sidewalk Improvements Project and accept the bid from Gulf South Construction in the amount of \$355,925.80 for the Base Bid and Additive Alternate No. 1; Authorize Mayor to execute contracts upon preparation.

Attachments: 15360 Bid Tab and Recommendation Letter

A MOTION was made by Council Vice President Dryden and seconded by Council Member George to Acknowledge bids received July 23, 2020 for the Hardy Street and Concart Street Drainage and Sidewalk Improvements Project and accept the bid from Gulf South Construction in the amount of \$355,925.80 for the Base Bid and Additive Alternate No. 1; Authorize Mayor to execute contracts upon preparation.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 22. 2020-517** Acknowledge bids received July 23, 2020 for the Water Improvements Along Lincoln Road Project and accept the bid from C. B. Developers, Inc. in the amount of \$253,448.00; Authorize Mayor to execute contracts upon preparation.

Attachments: 11248W Recommend Ltr & Bid Tab

A MOTION was made by Council Vice President Dryden and seconded by Council Member George to Acknowledge bids received July 23, 2020 for the Water Improvements Along Lincoln Road Project and accept the bid from C. B. Developers, Inc. in the amount of \$253,448.00; Authorize Mayor to execute contracts upon preparation.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 23. 2020-507** Acknowledge bids received July 9, 2020 for the C.E. Roy Pathway Project and accept the bid from Gulf South Construction in the amount of \$178,118.73 for the Base Bid and Additive Alternate No. 1; Authorize Mayor to execute contracts upon preparation.

Attachments: CE Roy Pathway Cert Bid Tab
CE Roy Pathway Bid Letter

A MOTION was made by Council Member George and seconded by Council Member Brown to Acknowledge bids received July 9, 2020 for the C.E. Roy Pathway Project and accept the bid from Gulf South Construction in the amount of \$178,118.73 for the Base Bid and Additive Alternate No. 1; Authorize Mayor to execute contracts upon preparation.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

- 24. 2020-523** Acknowledge bids received July 23, 2020 for the Vehicular Wayfinding and Parking Signage Project and accept the bid from RJM McQueen Contracting, Inc. in the amount of \$69,097.74; Authorize Mayor to execute contracts upon preparation.

Attachments: 15561 Bid Tab and Award Letter

A MOTION was made by Council Vice President Dryden and seconded by Council Member George to Acknowledge bids received July 23, 2020 for the Vehicular Wayfinding and Parking Signage Project and accept the bid from RJM McQueen Contracting, Inc. in the amount of \$69,097.74; Authorize Mayor to execute contracts upon preparation.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

ROUTINE AGENDA

THE ROUTINE AGENDA came before the Council.

A MOTION was made by Council Member George and seconded by Council Vice President Dryden to

approve the Routine Agenda.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

1. **2020-493** Authorize submission of a grant application to the National Endowment for the Arts (NEA) Grants for Arts Projects Program for funding to support the creation and installation of an outdoor sculpture, for a total project cost of \$200,000 (\$50,000 federal share and \$150,000 local share).

 Attachments: NEA GAP Application (final)

2. **2020-492** Authorize submission of a grant application to the Mississippi Arts Commission (MAC) Rapid Response Minigrant Program for funding to continue free virtual programming in the Fall of 2020 with a 16-week public art workshop. The total project cost is \$2,000 (\$1,000 state share and \$1,000 local share).

 Attachments: ApplicationPacket (final)

3. **2020-494** Acknowledge receipt of a Drainage Release, executed by Terry L. Garner and Warren T. Hankins, for 4127 Lincoln Road.

 Attachments: 4127 Lincoln Road Drainage Release Garner Dental Clinic

4. **2020-497** Acknowledge Bids received July 23, 2020 in a reverse auction for Supervisory Control and Data Acquisition Units for the City of Hattiesburg Water Department; Accept the bid from MD Electric in the amount of \$243,312.65.

 Attachments: MD Electric

5. **2020-509** Acknowledge receipt of the two-quote docket as provided for in 31-7-13(b) of the Mississippi Code of 1972

 Attachments: 2968 FINAL
 2969 FINAL
 2971 FINAL
 2974 FINAL
 2975 FINAL
 2977 FINAL
 20200727085017

6. **2020-503** Approve and authorize publication of a Request for Proposals for service related to the provision of Job Access Reverse Commute services for Hub City Transit.

 Attachments: Request for Proposals JARC 2020 7-24-20

7. **2020-513** Approve Plans and Specifications for the Hardy Street Paving Project (21st Avenue to West Pine Street) and authorize advertisement for bids.

 Attachments: Hardy St Paving Final Bid Spec 7-23-20
 Hardy St Paving Final Plan Set 7-23-20
 Advertisement for Bids

8. **2020-522** Approve Plans and Specifications for the Roadway Improvements on Highway 49, Camp Street, Adeline Street, and Mamie Street Project, Mississippi Department of Transportation State Aid Road Construction Project No. DECD-0018(35) BO and authorize advertisement for bids contingent upon Office of State Aid and Road Construction approval.

 Attachments: 178-11 Stamped Construction Plans 07-17-2020
 178-11 Advertisement for bids
 Contract Docs and Specs Sent with Prelim Assembly

9. **2020-539** Approve Specifications and Authorize Publication for one (1) Twenty Yard Rear Loading Refuse collection Truck for the City of Hattiesburg Public Works Department.

 Attachments: 20 Yard Rear Loader Body and Chassis Specifications (005)
 NOTICE TO BIDDER- 20-yard rear loader

10. **2020-496** Approve the sale of grave spaces, per attached Memo's, Receipts, and Deeds.

 Attachments: Memo's (08-04-2020)
 Receipts (08-04-2020)
 Deeds (08-04-2020)
11. **2020-526** Approve claims docket for the period ending July 31, 2020.

 Attachments: Docket 7.31.20
12. **2020-545** Authorize the publication of Request for Proposals for professional services related to disaster and pandemic response cost recovery and related grant and project management services associated with impacts from the ongoing COVID-19 Pandemic.

Executive Session

A MOTION was made by Council Member George for the Council to enter closed determination upon the issue of whether or not to declare an Executive Session at 5:25 p.m.

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

Yeas: 5 - George, Delgado (via teleconference), Carroll, Dryden and Brown

Nays: 0

Council Member Delgado disconnected via teleconference at 5:26 p.m.

Council President Carroll asked for the room to be cleared at this time.

A MOTION was made by Council Member George and seconded by Council Vice President Dryden to enter Executive Session to discuss strategy or negotiations with respect existing and prospective litigation, since to have an open meeting on this would have a detrimental effect on the litigating position of the City.

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

Yeas: 4 - George, Carroll, Dryden and Brown

Nays: 0

Absent: 1 - Delgado

The City Attorney stepped out into the hall and announced that the Council has gone into Executive Session to discuss strategy or negotiations with respect to existing and prospective litigation.

Those present for the Executive Session were Mayor Toby Barker; Council members Jeffrey George, Carter Carroll, Mary Dryden and Nicholas Brown; City Attorney, Randy Pope; Chief Administrative Officer, Ann Jones; City Engineer, Lamar Rutland; Chief Communications Officer, Samantha McCain; Clerk of Council, Ronda Cole; Deputy Clerk of Council, Lisa Luu Jolly; Attorney John Milner of Brunini Associates; and Shea McNease of Shows, Dearman & Waits, Inc.

A MOTION was made by Council Member George and seconded by Council Vice President Dryden to exit Executive Session and re-open the meeting to the public at 6:26 p.m.

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

Yeas: 4 - George, Carroll, Dryden and Brown

Nays: 0

Absent: 1 - Delgado

In Memoriam:

A MOTION was made by Council Member to Adjourn the meeting in memory of:

- Mr. Lance Sanderford
- Representative Gene Saucier
- Senator Bob Dearing
- Mr. Alvin Eaton
- Mr. Ryan Locklear
- Ms. Rebecca Poston
- Ms. Flora Lofton Anderson
- Ms. Catherine Calbert Jones

Meeting Adjourn

Council President Carroll declared the **meeting adjourned 6:26 p.m., this 4th day of August, 2020**, by unanimous consent, until the 17th day of August, 2020.

ATTEST:

APPROVE:

Clerk of Council

Council President

ATTEST AND CERTIFY:

APPROVE:

City Clerk

Mayor

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INTENTIONALLY**

WENDY HUFF ELLARD, SHAREHOLDER
Direct Dial: 601.969.4681
E-Mail Address: wellard@bakerdonelson.com

August 28, 2020

Mayor Toby Barker
CITY OF HATTIESBURG
200 Forrest Street
Hattiesburg, MS 39401

RE: Engagement to Provide Support Following Federally Declared Disasters/Events

Dear Mayor Barker:

We are pleased that the City of Hattiesburg is considering an engagement with Baker, Donelson, Bearman, Caldwell & Berkowitz, PC to provide support to the City in assessing the potential federal funding opportunities available to the City following federally declared disasters. This may include assistance in eligibility and compliance support for funding under the various federal grant programs managed by the Federal Emergency Management Agency ("FEMA"), support for funding to be received from the State of Mississippi including through any of its agencies, funding from the U.S. Department of Housing and Urban Development ("HUD"), and funding the City may be eligible to receive pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act. It would be our pleasure to work with you on these matters and others as we may mutually agree in the future.

The purpose of this letter is to provide more information about our Disaster Recovery and Dispute Resolution practice, provide further definition regarding the requested scope of work and pricing, and, if approved, confirm our engagement including certain information concerning our fees, billing and collection policies, and other terms that will govern our relationship.

Disaster Recovery and Government Services Practice. Attached to this letter is additional information about Baker Donelson and our Disaster Recovery and Government Services practice. If you have any questions or would like more information, please don't hesitate to ask.

Limited Engagement. This engagement would be limited in scope in the following respects. The Firm would not be City of Hattiesburg's general counsel; while there are a plethora of issues that can arise from natural disasters, the Firm would only be engaged for a few discrete tasks. Specifically, the Firm would engage to assist City on issues regarding its current and future claims for federal and State funding, including procurement compliance guidance, eligibility guidance, and appeals and regulatory support as may be specifically requested. We have not presently been engaged to perform any other services. At the conclusion of these matters, this limited scope engagement would be concluded absent our agreement to extend to other matters.

Work provided to the City of Hattiesburg would be billed based on our standard hourly rates and invoiced monthly. My current rate is \$420 per hour, Michelle Zaltsberg's rate is \$360 per hour, Jordan Corbitt's rate is \$285 per hour, Parker Wiseman's rate is \$275 per hour, the rate for Ernie Abbott (our senior FEMA Disaster Recovery Group member and former FEMA General Counsel) is \$530 per hour, and rates for other attorneys and Disaster Recovery Group professionals that may be assigned to assist range from \$200 to \$360 per hour. If needed, the rate of our paralegal case assistant is currently \$200 per hour. Our rates are periodically adjusted and the rates of attorneys working on your matter may be raised based on market considerations and/or increased seniority or specialization of the lawyers involved.

Attached to this letter is a summary of the terms of engagement that will apply to our representation. Please review these and let me know if you have any questions concerning our policies.

Potential Conflicts of Interest. Baker Donelson represents a broad range of clients that may be involved in various aspects of recovery efforts from natural disasters. Those clients include states and municipalities and their various agencies, specifically including local governments and public authorities; non-profit entities eligible for FEMA disaster assistance; private contractors that engage in multiple industries, including program management, design and engineering, debris removal and construction; other public and private property owners; project owners; insurance companies; and third party administrators and individuals. We also have a robust pro bono practice as our lawyers contribute their time to those in need. Thus, the Firm assists a number of different types of public and private entities and individuals, both regarding their FEMA claims and appeals and to represent contractors in various clean-up, removal and construction industries.

In the course of our representation, the Firm may obtain confidential information regarding one party which may be of interest to the other. We cannot disclose such information. The Firm plans to represent the City of Hattiesburg in this engagement and will vigilantly protect the confidentiality of our communications with the City. We will also vigorously represent the Firm's other clients on their matters and will vigilantly protect the confidentiality of our communications with these other clients as well.

The City of Hattiesburg acknowledges in this engagement the Firm's representation of these other clients and their claims and agrees that by accepting this limited scope engagement, Baker Donelson will not be precluded from representing the Firm's other clients now and in the future in these various aspects of the disaster recovery process including transactions and litigation. The City acknowledges that the Firm's review of a specific contract or form of contract for FEMA and federal regulatory compliance is not a general engagement with respect to that contract or project and is not an engagement to review the scope of work, design, engineering, change orders, or contract performance. Accordingly, should a dispute later arise between vendors or contractors and the City, Baker Donelson's work under this engagement would not present a conflict for Baker Donelson's representation of the vendor or contractor adverse to City of Hattiesburg.

Some of the Firm's representations of other clients as noted above may bear a relationship to similar FEMA work we perform for the City of Hattiesburg and some of our other clients may even be adverse to City of Hattiesburg in transactions and disputes, including litigation. You and the Firm agree that so long as the specific work and advice we provide to City is not directly at issue and so long as we

City of Hattiesburg

August 28, 2020

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do not divulge any of the City's confidences, we may represent our other clients in those matters. This engagement includes the City of Hattiesburg's waiver of the conflicts of interest that might otherwise arise by virtue of our engagement with the City as outlined herein and consent to the representation by Baker Donelson of other parties in transactions and disputes, including future litigation.

If the terms described above and in the attached summary are satisfactory, please have a copy of the letter signed and returned to me.

We are grateful for the opportunity to work with you in connection with this matter, and we look forward to a mutually satisfactory relationship.

Sincerely,

BAKER, DONELSON, BEARMAN,
CALDWELL, & BERKOWITZ, PC

A handwritten signature in blue ink, appearing to read "Wendy Huff Ellard". The signature is fluid and cursive, with the first name "Wendy" being more prominent than the last name "Ellard".

Wendy Huff Ellard

Enclosure

AGREEMENT WAIVER AND CONSENT

We have carefully read the foregoing letter, have considered all information necessary and useful in determining whether or not to consent to the representation outlined above and to waive the conflicts of interest described therein. We have been encouraged to consult with independent counsel regarding this consent to representation and waiver of the conflicts of interest. We are fully aware of our legal rights in this regard. Upon reasoned reflection, we hereby voluntarily agree to waive these conflicts of interest and confirm our consent to the Baker Donelson representations as outlined above. In addition, we agree that we will respect the confidences of the other clients with Baker Donelson and the attorney-client privilege with respect to the other clients of Baker Donelson.

AGREED AND ACCEPTED:

Mayor Toby Barker
City of Hattiesburg

Dated: _____

TERMS OF ENGAGEMENT

We appreciate your decision to retain Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. as your legal counsel. Our initial engagement is limited to the matter(s) identified in the engagement letter that accompanies this attachment. The following summarizes our billing practices and certain other terms that will apply to our initial and any future engagement.

1. **MONTHLY BILLING.** We will bill monthly throughout the engagement for a particular matter, absent an express agreement to the contrary, and our statements are due within 30 days from the date they were rendered. In instances in which we represent more than one person with respect to a matter, each person that we represent is jointly and severally responsible for our fees and expenses with respect to the representation. Our statements contain a concise summary of each matter for which legal services are rendered and a fee was charged.

2. **DELINQUENCIES.** In the event that a statement is not fully paid within 60 days from the date it was rendered, we will have the discretion to determine whether our withdrawal from this matter is appropriate under the circumstances. By retaining us under these terms, you agree that we are entitled to attorneys' fees and costs if collection activities are necessary. You also agree that non-payment of statements shall entitle us to stop work and withdraw from your representation in any court or administrative proceedings and you agree not to contest any such withdrawal.

3. **RETAINERS AND ESTIMATES.** When establishing fees for services that we render, we are guided primarily by the time and labor required, although we also consider other appropriate factors, such as the novelty and difficulty of the legal issues involved; the legal skill required to perform the particular assignment; time-saving use of resources (including research, analysis, data and documentation) that we have previously developed and stored electronically or otherwise in quickly retrievable form; the fee customarily charged by comparable firms for similar legal services; the amount of money involved or at risk and the results obtained; and the time constraints imposed by either you or the circumstances. The firm generally requires a retainer in an amount which is appropriate with respect to the proposed representation. Unless otherwise agreed, the retainer will be applied to the last statement rendered in connection with the representation. If any unearned portion of a retainer exceeds \$20.00, it will be refunded to you. Otherwise, it will be retained by the firm.

4. **INQUIRIES AND BILLING FORMATS.** We invite our clients to discuss freely with us any questions that they have concerning a fee charged for any matter. We want our clients to be satisfied with both the quality of our services and the reasonableness of the fees that we charge for those services. We will attempt to provide as much billing information as you require and in such customary form that you desire.

5. **DELEGATION AND PERIODIC CHANGES IN RATES.** In determining a reasonable fee for the time and labor required for a particular matter, we consider the ability, experience and reputation of the lawyer or lawyers in our firm who perform the services. To facilitate this determination, we internally assign to each lawyer an hourly rate based on these factors. When selecting lawyers to perform services for a client, we generally seek to assign lawyers having the lowest hourly rates consistent with the skills, time demands and other factors influencing the professional responsibility required for each matter. Of course, our internal allocation of values for lawyer times changes periodically to account for increases in our cost of delivering legal service, other economic factors, and the augmentation of a particular lawyer's ability, experience and reputation. We record and bill our time in one-tenth hour (six minute) increments.

6. **EXPENSES.** In addition to legal fees, our statements may include out-of-pocket expenses that we have advanced on your behalf and other charges (which may exceed direct costs) for certain support activities. Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. reserves the right to submit expenditures of \$100.00 or more to you for direct payment to the service provider. Advanced costs generally will include such items as travel expenses, postage, filing, recording, certification and registration fees charged by governmental bodies. Our charges typically include such items as long distance telephone calls, facsimile transmissions, overnight courier services, computer research and charges for photocopying materials sent to you or third parties or required for our use. Unless otherwise specifically agreed, you agree to pay us for these other charges on the following basis: (a) long distance telephone - published long distance rates; (b) facsimile transmissions - \$1.00 per page for outgoing faxes and no charge for incoming faxes; and (c) photocopying - \$.20 per page.

7. **THIRD PARTIES SUCH AS EXPERTS AND COURT REPORTERS.** During the course of our representation, it may be appropriate or necessary to hire third parties to provide services on your behalf. These services may include consulting or testifying experts, investigators, providers of computerized litigation support and court reporters. Because of the legal "work product" protection afforded to services that an attorney requests from third parties, in certain situations our firm may assume responsibility for retaining the appropriate service providers. Even if we do so, however, you will be responsible for paying all fees and expenses directly to the service providers or reimbursing us for these costs.

8. **SCOPE OF OUR DUTIES.** We will provide the legal services generally described in the engagement letter that accompanies this attachment. You will provide us with such factual information and materials as we require to perform the services identified in the engagement letter, and will make such business or technical decisions and determinations as are appropriate. It is understood that you are not relying on us for business, investment, or accounting decisions, or to investigate the character or credit of persons with whom you may be dealing, unless otherwise

specified in the letter. We will keep you advised of developments as necessary to perform our services and will consult with you as necessary to ensure the timely, effective and efficient completion of our work.

9. **ETHICAL MATTERS.** Regarding the ethics of our profession that will govern our representation, several points deserve emphasis. As a matter of professional responsibility, we are required to preserve the confidences and secrets of our clients. This professional obligation and the legal privilege for attorney-client communications exist to encourage candid and complete communication between a client and its lawyer. We can perform truly beneficial services for a client only if we are aware of all information that might be relevant to our representation. Consequently, we trust that our attorney-client relationship with you will be based on mutual confidence and unrestrained communication that will facilitate our proper representation of you. Additionally, you should be aware that, in instances in which we represent a corporation or similar legal entity, our client relationship is with the entity and not with its individual executives, shareholders, directors, partners, or persons in similar positions. In those cases, our professional responsibilities are owed to the entity. Of course, we can also represent individual executives, shareholders, partners and other persons related to the entity in matters that do not conflict with the interests of the entity.

Because we are a large, full-service law firm with offices located throughout Tennessee and in Washington, D.C., Jackson, Mississippi, Birmingham, Alabama, Atlanta, Georgia, New Orleans, Louisiana, lawyers in one office or practice area may be (and often are) asked to represent a client with respect to interests that are adverse to those of another client who is represented by the firm in connection with another matter. Just as you would not wish to be foreclosed in an appropriate situation from retaining a law firm that competes with Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. our firm wishes to be able to consider the representation of multiple competitors in your industry or other clients who may have interests that are potentially adverse to your interests, but with respect to matters that are unrelated in any way to our representation of you. The ethics governing the legal profession permit law firms to accept such multiple representations assuming certain criteria are met as discussed below.

During the term of this engagement, our primary obligation and goal is to meet the legal needs of you - our valued client. Consequently, we agree that we will not accept representation of another client to pursue interests that are directly adverse to your interests unless and until we have made full disclosure to you of all the relevant facts, circumstances and implications of our undertaking the two representations, and you have consented to our representation of the other client. You agree, however, that you will be reasonable in evaluating such circumstances and that you will give your consent if we can confirm to you in good faith that the following criteria are met: (i) there is no substantial relationship between any matter in which we are representing or have represented you and the matter for the other client; (ii) our representation of the other client will not implicate any confidential information we have received from you; (iii) our effective representation of you and the discharge of our professional responsibilities to you will not be prejudiced by our representation of the other client; and (iv) the other client has also consented in writing based on our full disclosure of the relevant facts, circumstances and implications of our undertaking the two representations.

By making this agreement, we are establishing the criteria that will govern the exercise of your right under applicable ethical rules to withhold consent to our representation of another client whose interests are adverse to yours. You will retain the right, of course, to contest in good faith our representation that the criteria have been met, in which event we would have the burden of supporting our representations to you.

Attached to these Terms of Engagement is a copy of our Privacy Policy.

10. **TERMINATION OF SERVICE.** Upon completion of the matter to which this representation applies, or upon earlier termination of our relationship, the attorney-client relationship will end unless you and we have expressly agreed to a continuation with respect to other matters. We hope, of course, that such a continuation will be the case. The representation is terminable at will by either party subject to ethical restraints and the payment of all fees and costs. In the unusual event that a court of competent jurisdiction refuses to permit Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. to withdraw upon termination, you remain responsible for fees and costs.

Your agreement to this engagement constitutes your acceptance of the foregoing terms and conditions. If any of them is unacceptable to you, please advise us now so that we can resolve any differences and proceed with a clear, complete and consistent understanding of our relationship.

PRIVACY POLICY

Under a recently adopted federal law, attorneys in some circumstances may be required to inform their clients of their policies regarding privacy of client information. Attorneys have been and continue to be bound by professional standards of client confidentiality that are even more stringent than those required by law. Therefore, we have always protected your right to privacy and the confidentiality of your information.

Types of Nonpublic Personal Information We Collect

We collect nonpublic personal information about you that is provided to us by you or obtained by us with your authorization.

Parties to Whom We Disclose Information

For current and former clients, we do not disclose any nonpublic personal information obtained in the course of our practice except as agreed to by you, or as required under applicable law.

Protecting the Confidentiality and Security of Current and Former Clients' Information

We retain records relating to professional services that we provide so that we are better able to assist you and, in some cases, to comply with professional guidelines. In order to guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards.

Please call if you have any questions, because your privacy, our professional ethics, and the ability to provide you with quality legal services are very important to us.

This notice requirement only applies to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes, and does not apply to information about companies or individuals who obtain such products or services for business, commercial, or agricultural purposes.

**Addendum to the Agreement between the City of Hattiesburg, Mississippi and Baker,
Donelson, Bearman, Caldwell & Berkowitz, PC**

WHEREAS, on March 11, 2020, the Mississippi State Department of Health confirmed the first presumptive case of COVID-19 in Mississippi;

WHEREAS, on March 13, 2020, the President of the United States declared a nationwide state of emergency due to the coronavirus COVID-19 pandemic, determining that the pandemic was of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the “Stafford Act”);

WHEREAS, on March 13, 2020, the City of Hattiesburg declared the existence of a local emergency caused by the COVID-19 pandemic;

WHEREAS, Governor Reeves issued Executive Order No. 1458 on March 14, 2020, issuing a Proclamation declaring that a State of Emergency exists in the State of Mississippi as a result of COVID-19 and continuing;

WHEREAS, the national Centers for Disease Control and Prevention (CDC) and the Mississippi State Department of Health continue to closely monitor the outbreak of respiratory illnesses caused by the novel (new) coronavirus COVID-19, and are working to limit the spread of cases nationally and in Mississippi;

WHEREAS, on April 5, 2020, the President deemed the situation of sufficient severity to overwhelmed local and State resources and issued a major disaster declaration, DR-4528, to cover the entire State of Mississippi;

WHEREAS, the City of Hattiesburg has and continues to incur significant administrative, operational, and financial burdens from its continuing response to the COVID-19 pandemic;

WHEREAS, the City’s primary mission has been, and continues to be, to protect the public health and safety within its jurisdiction, to do everything within its power to support the economic recovery of the impacted area; however, the City also realizes that it is very important for all response and recovery efforts to be performed in a manner compliant with applicable federal procurement and funding eligibility requirements to allow the City’s otherwise eligible costs to qualify for federal reimbursement;

WHEREAS, the City requires immediate help to assist with compliance requirements and to otherwise efficiently and effectively navigate the federal regulatory requirements applicable to the critical work being performed;

WHEREAS, the City had no time to delay engagement of this necessary assistance;

WHEREAS, the City reached out to neighboring jurisdictions and entities within the area for recommendations as to additional legal and policy support to supplement the current resources engaged by the City and was provided the contact information for Baker, Donelson, Bearman,

Caldwell & Berkowitz, PC (the “Firm”); through this and other research performed by City personnel, it was determined that the Firm was the only available resource for the type of immediate assistance with the federal requirements as needed by the City to ensure the City’s effective and efficient completion of the critical work required to address the ongoing compliance efforts and continuing extraordinary needs created in the City’s jurisdiction by the COVID-19 pandemic;

WHEREAS, the City has determined that the Firm is the only source available to provide the services required as the Firm has overwhelmingly demonstrated it has a unique capacity to effectively and efficiently advise on critical compliance matters of important to the City; these unique services are not available from any other firms, the City has searched and not located any other available source to provide the level of services required and now to be procured from the Firm;

WHEREAS, the City made initial contact with the Firm in July 2020 to discuss possible assistance that could be provided to the City;

WHEREAS, the City and the Firm discussed the rate structure to be used for the engagement; the City confirmed the rates and structure appeared fair and reasonable for the services required;

WHEREAS, the scope of work under the engagement, such as the number and nature of the legal and regulatory issues that would arise during the performance of the engagement, and the nature and complexity of disputes that would arise during performance of the agreement, are and will remain highly uncertain, and the City determined that no other form of contract other than a time and materials contract was suitable for this work;

WHEREAS, the City and the Firm entered into an agreement under which the Firm is to provide the City consulting services related to the City’s efforts to obtain and keep disaster assistance funding (the “Agreement”);

WHEREAS, the Agreement consists of an engagement letter to be reviewed and signed by the City and Wendy Huff Ellard on behalf of the Firm and the attachments thereto entitled “Terms of Engagement” and “Privacy Policy”;

WHEREAS, the City intends to seek federal reimbursement for certain or all of the costs incurred under the Agreement as Direct Administrative Costs and/or Management Costs;

WHEREAS, the Parties understand that the Agreement must be modified to meet the requirements of federal regulations;

WHEREAS, the Parties intend to execute this Addendum to bring the Agreement into compliance with the aforementioned requirements;

NOW, THEREFORE in consideration of the premises and the mutual covenants herein contained, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree the following provisions are hereby incorporated into the Agreement:

1. NOT TO EXCEED AMOUNT

Unless agreed to in writing in an amendment to the Agreement executed by authorized representative of the parties, the amount paid by the City to the Firm shall not exceed \$25,000.00 over the term of the Agreement. The Firm exceeds this price ceiling at its own risk absent written authorization from the City.

2. TERMINATION FOR CAUSE OR CONVENIENCE

As noted in the Engagement Letter and Terms of Engagement that constitute the Agreement, the parties' relationship is terminable at will by either party subject to ethical restraints and the payment of all fees and costs. The terms related to termination in the Agreement remain unchanged.

3. CHANGES

Any changes to the scope of the engagement shall be made in writing and acknowledged by both parties. Such changes need not be signed. Changes to rates shall be made as described in the Agreement.

4. REMEDIES

If any work performed by the Firm fails to meet the requirements of the Agreement, any other applicable standards, codes or laws, or otherwise breaches the Agreement, the City may terminate the Agreement and pursue and obtain any and all other available legal or equitable remedies.

5. COMPLIANCE WITH CLEAN AIR AND CLEAN WATER ACT

CLEAN AIR ACT

- (1) The Firm agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Firm agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management, the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Firm agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

FEDERAL WATER POLLUTION CONTROL ACT

- (1) The Firm agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
- (2) The Firm agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management, the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- (3) The Firm agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FEMA.

6. SUSPENSION AND DEBARMENT

Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. The Firm can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.

- (1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Firm is required to verify that none of the Firm, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Firm must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) A signed certification regarding debarment, suspension, and other responsibility matters is attached hereto as Exhibit A. This certification is a material representation of fact relied upon by the City. If it is later determined that the Firm did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Florida Division of Emergency Management and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

7. BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification found at APPENDIX A, 44 C.F.R. PART 18 (attached hereto as Exhibit B). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

- A. The Firm agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Firm which are directly pertinent to this Agreement, and not protected by any applicable privilege or confidentiality restrictions, for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Firm agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Firm agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

9. DHS SEAL, LOGO AND FLAGS

The Firm shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

10. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund the Agreement only. The Firm will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

11. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, the Firm, or any other party pertaining to any matter resulting from the Agreement.

12. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Firm acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Firm's actions pertaining to this Agreement.

13. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

If the Firm intends to subcontract any portion of the work covered by this Agreement, the Firm must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. A list of labor surplus areas is available from the Department of Labor at <https://www.doleta.gov/programs/lsa.cfm>. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

[SIGNATURES ON FOLLOWING PAGE]

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC

By: _____

Title: _____

Date: _____

CITY OF HATTIESBURG, MISSISSIPPI

By: _____

Title: _____

Date: _____

Exhibit A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the CONTRACTOR (referred to herein as the “prospective lower tier participant”) is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by

a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
CONTRACTOR Company Name

Name

Title

Signature

Date

Exhibit B

Certification for Contracts, Grants, Loans, and Cooperative Agreements (to be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

Name of Contractor

Signature

Printed Name

Title

Date



DISASTER RECOVERY AND GOVERNMENT SERVICES

COVID-19 RESPONSE TEAM

BAKER DONELSON



COVID-19 RESPONSE TEAM

AS THE CORONAVIRUS (COVID-19) CONTINUES TO PRESENT UNFORESEEN AND UNPRECEDENTED THREATS AND CHALLENGES TO STATE AND LOCAL GOVERNMENTAL ENTITIES, THE HEALTH CARE INDUSTRY, AND PRIVATE NON-PROFIT ENTITIES PROVIDING CRITICAL SERVICES, BAKER DONELSON ATTORNEYS AND ADVISORS ARE STEADFASTLY MONITORING DEVELOPMENTS AND PROVIDING LEGAL GUIDANCE FOR OUR CLIENTS.

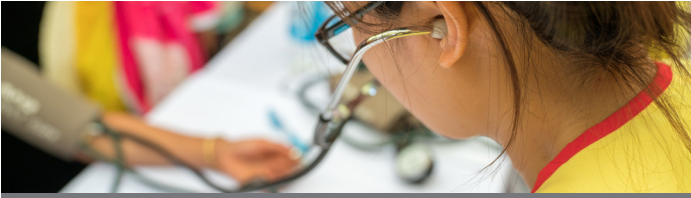
Our Disaster Recovery and Government Services team has already assisted multiple clients, including hospitals, universities and academic medical centers, in navigating early response efforts, identifying eligibility issues, and helping to design documentation protocols to support eventual reimbursement of incurred eligible costs. We are supporting dozens of hospitals across the country to address surge capacity, including the set-up and implementation of multiple field hospitals, and to address the financial challenges presented by the pandemic.

With more than 200 dedicated attorneys and advisors in ten states and the District of Columbia, Baker Donelson's leading health law and policy practices ensure a more comprehensive response by providing significant knowledge and resources to our Disaster Recovery and Government Services team.

We are on the front lines of the response as a trusted advisor and will continue working to support effective and efficient recovery for our clients and our communities.

www.bakerdonelson.com/disaster-recovery-and-government-services

COVID-19 RELIEF REPRESENTATIVE EXPERIENCE



Assisting a large non-profit health care system in Louisiana in applying for, securing, and related compliance with more than \$280 million in COVID-19 federal relief funds to date, including a FEMA Public Assistance grant for more than \$51 million to cover the estimated costs to increase and enhance medical capacity at its existing licensed and certified hospitals.



Assisting one of the largest hospital systems in the Mid-South in applying for, securing, and related compliance with more than \$220 million in COVID-19 federal relief funds to date, including FEMA, HHS Provider Relief Fund, various HHS grant programs, refundable tax credits, and Coronavirus Relief Fund.



Assisting one of the largest hospital systems in Alabama in applying for, securing, and related compliance with more than \$180 million in COVID-19 federal relief funds to date, including FEMA, HHS Provider Relief Fund, various HHS grant programs, refundable tax credits, and Coronavirus Relief Fund.



Assisting an integrated health care system with 21 hospitals in applying for, securing, and related compliance with more than \$150 million in COVID-19 federal relief funds to date, including FEMA, HHS Provider Relief Fund, various HHS grant programs, and Coronavirus Relief Fund.



Assisting a large non-profit health care system with more than 1,800 licensed beds in applying for, securing, and related compliance with more than \$50 million in COVID-19 federal relief funds to date, including FEMA, HHS Provider Relief Fund, various HHS grant programs, refundable tax credits, and Coronavirus Relief Fund.

FOR MORE THAN 130 YEARS, BAKER DONELSON HAS BUILT A REPUTATION FOR ACHIEVING RESULTS FOR OUR CLIENTS, BOTH NATIONALLY AND INTERNATIONALLY, ON A WIDE RANGE OF LEGAL MATTERS. AS THE 64TH LARGEST LAW FIRM IN THE U.S., BAKER DONELSON GIVES CLIENTS ACCESS TO A TEAM OF MORE THAN 650 ATTORNEYS AND PUBLIC POLICY ADVISORS REPRESENTING MORE THAN 30 PRACTICE AREAS, ALL SEAMLESSLY CONNECTED ACROSS 21 OFFICES TO SERVE VIRTUALLY ANY LEGAL AND POLICY NEED.



DISASTER RECOVERY AND GOVERNMENT SERVICES

BAKER DONELSON IS A LEADING PROVIDER OF LEGAL SERVICES RELATED TO DISASTER RECOVERY POLICY, COMPLIANCE, AND DISPUTE RESOLUTION FOR ORGANIZATIONS AND AGENCIES INTERACTING DIRECTLY WITH THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA).

Organizations providing governmental services turn to Baker Donelson's trusted team of lawyers for timely and cost-effective legal and regulatory advice necessary to prepare for, respond to, and recover from a disaster. Our team, which includes a former general counsel of FEMA, and two attorneys who have provided legal and regulatory support to the emergency management agencies of two other states for a combined total of 15 years, has a deep understanding of FEMA's Public Assistance (PA) and Hazard Mitigation Grant Program (HMGP), including:

- Expertise with the federal grant administrative requirements of 2 C.F.R. Part 200, including the procurement standards for contracts funded by federal grants;
- Expertise with Section 705(c) of the Stafford Act (protecting against retroactive deobligation);
- Financial oversight, document management, legal, and compliance services under FEMA's PA Program and HMGP;
- Development of program procedures for eligibility, duplication of benefits, private insurance, disaster mitigation, and environmental and historic preservation consistent with FEMA regulations;
- Preparation of more than 350 administrative appeal responses for grantee/recipient clients;
- Filing of more than 100 appeals on behalf of applicants/sub-grantees under FEMA programs such as PA and HMGP;
- Expertise in filing (for applicants) and supporting (for grantee/recipients) arbitrations with FEMA before the CBCA; and
- Support to applicant/sub-recipient and grantee/recipient clients for more than 65 Department of Homeland Security – Office of Inspector General (DHS–OIG) audits.

Baker Donelson's multi-faceted experience makes us uniquely qualified not only to provide counsel to entities seeking to maximize recovery and take advantage of the opportunities often available post-disaster, but also to represent the interests of these entities when confronted with a denial or deobligation of funding.

FEMA PUBLIC ASSISTANCE PROGRAM, POLICY AND PROCUREMENT

Baker Donelson attorneys advise clients on every aspect of FEMA's PA program, including advising on applicant, work, or cost eligibility and offering strategies for maximizing eligibility and reimbursement; issues related to prohibited duplication of benefits, including proper allocation of insurance proceeds and analyses of eligibility for funding under competing federal programs; review of documentation for adequacy in the substantiation of claims; and many other areas. Our team often advises clients on these issues as they arise in project formulation or preparation of a request for reimbursement, but also advocates for clients on these programmatic and policy issues in appeals and arbitrations.

Applicants for federal grants under the FEMA PA program are required to comply with federal procurement regulations and FEMA policy in order to obtain federal funding. Non-compliance can result in the denial of an application for funding or, often years later, the de-obligation of funds already paid by FEMA after an audit by the OIG. Indeed, in recent years OIG and FEMA have taken stricter positions than they had historically with respect to procurement compliance.

Compliance with applicable procurement requirements is absolutely critical. The federal procurement standards applicable to FEMA grants are found at 2 C.F.R. Part 200 (sometimes referred to as the "Super Circular" or "Uniform Rules") and FEMA provides amplifying guidance in various publications. FEMA's guidance, however, is not always clear on how to properly interpret the applicable regulatory requirements, generating ambiguity about what each regulation means and how an Applicant can ensure its compliance.

Procurement non-compliance is consistently the largest risk area for FEMA program funding. Baker Donelson is uniquely situated to handle this work because of its extensive experience in advising clients about the FEMA PA Program. Not only has Baker Donelson provided similar compliance reviews to numerous clients in the past, but it has also advised dozens of clients with respect to actual procurements, including reviewing contracts, RFPs, internal policies and even providing real-time advice through solicitation, evaluation, and contractor selection. Moreover, Baker Donelson's extensive work on FEMA appeals provides invaluable insight into the issues about which clients should be especially concerned and provides greater insight into likely areas of special focus.

FEMA APPEAL AND ARBITRATION PROCESSES

Section 423 of the Stafford Act provides applicants for PA a right to appeal any agency decision regarding eligibility or amount of assistance. Applicants have 60 days from the date they are notified of the decision being appealed to submit their first appeal to the appropriate FEMA Regional Office. By statute and regulation, FEMA has 90 days in which to decide the appeal or issue a request for information (RFI), although FEMA frequently misses its deadlines for taking action. If an RFI is issued, it will include a response deadline (usually 30 days). Upon receipt of the requested information, FEMA is supposed to issue a decision or issue an additional RFI within 90 days. Upon receiving notice of an adverse decision on a first appeal, applicants have 60 days to file a second appeal with FEMA Headquarters. FEMA again has 90 days in which to decide the appeal or issue a request for information.

Historically, arbitration was only an option for certain applicants challenging FEMA decisions on PA funding for Hurricanes Katrina, Rita, and (under different rules) Sandy. The Disaster Recovery Reform Act of 2018 changed that, amending § 423 of the Stafford Act to grant a right of arbitration to applicants disputing a FEMA determination; we will refer to the arbitration option discussed below as "Section 423 arbitration." Section 423 arbitration is available where:

1. The dispute arises from a disaster declared after January 1, 2016;
2. The amount in dispute is over \$500,000 (less for certain rural applicants); and
3. The applicant timely filed a first appeal.

Arbitration may be filed either within 60 days of the first appeal determination or, if no first appeal determination has been issued, any time after an appeal has been pending with FEMA for more than 180 days with no final decision. Arbitrations are heard before a panel of judges sitting on the Civilian Board of Contract Appeals (CBCA). Once arbitration is filed, the assigned arbitration panel will schedule a prehearing conference within 14 calendar days of docketing. The matter will then proceed according to the schedule agreed to by the parties, but approved by the panel, including decision on the written record or following an in-person hearing held in Washington, D.C. or elsewhere if approved. Consistent with the intent to expedite resolution of these matters, any hearing will begin within 60 days of the initial conference or as otherwise approved by the panel with a goal of issuing a written decision within 60 days after close of the record. The decision of the arbitration panel is binding and final on all parties.

COVID-19 RESPONSE TEAM

BY CLICKING ON THE NAME OF THE TEAM MEMBER, YOU MAY VIEW THEIR FULL BIO ON OUR WEBSITE.



Ernest B. Abbott

*Disaster Recovery
Of Counsel*



Wendy Huff Ellard

*Disaster Recovery
Shareholder*



Danielle M. Aymond

*Disaster Recovery
Of Counsel*



Ivan Boatner

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Elizabeth J. Cappiello

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Jordan Corbitt

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Michelle F. Zaltsberg

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*Health Policy
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www.bakerdonelson.com

Community Covid 19 Testing

Outreach Project Plan

With the requested staffing as outlined in the Project Budget for one testing day, we can test approximately 15 patients per hour with a maximum of 90 patients per testing day.

We will take the first 90 people signed in each day.

Hours of operations 8:00AM -4:00PM, three days per week.

7:30 – 8:00:	Administrative arrive and get facility prepared for the day
8:00 – 8:30:	Staff begin registration process for patients
8:30 – 12:30:	Testing
12:30-1:00:	Lunch break
1:00 – 4:00:	Testing
4:00 – 5:00:	Completion of remainder of paperwork by administrative staff and facility takedown

Total of 7 hours of testing per day

Testing workflow:

- Staff will provide patient with appropriate personal protective equipment (“PPE”) and paperwork (registration documents, COVID questionnaire, and electronic health record sign-up instructions for those patients who have internet access or a Smartphone). Patients return paperwork when completed then wait in their car until they are called. Staff will prepare clipboard with patient documents and add PPE form with patient information.
- While waiting, patients will be walked through the electronic health record sign-up process via phone while the patient waits in their car after filling out paperwork.
- Staff will call patient and instruct them to report to the staging area, which will house patients who are due up next to be tested
- When the patient is called back to testing area, tech will instruct patient on the procedure then perform the nasopharyngeal swabbing. Oxygen saturation will be obtained and written down on patient questionnaire
- Staff then completes paperwork, stores tube in cooler, and prepares for transport back to a central location for submission to the third party reference laboratory.
- Staff provide patient with
 - ✓ work excuse,
 - ✓ instructions on self-quarantine until results are received,
 - ✓ instructions on what to do if results return positive
 - ✓ handouts on social distancing, hand washing and masks use

- Each hour, Staff will transport samples and paperwork back to the central location after reconciliation is done to ensure that all paperwork and samples match the check-in log
- Staff will then enter
 - ✓ patient information from registration documents, updating information in Clinic's electronic health record
 - ✓ data from COVID patient questionnaire into Clinic's electronic health record
- Once completed, lab labels will be printed out for the lab samples. Staff will apply labels to samples, prepare samples for shipment to lab, perform reconciliation process, and store samples in refrigerator until they are picked up by third party lab.

Resulting workflow:

All results will be centrally processed.

- Positives results. As stipulated by the Department of Health, the Medical Director / Physician will call all positive results to patients, give instructions on quarantine and symptoms and assesses if patient's conditions warrant an in-person medical evaluation.
- Negative results. Staff will communicates all negative results through electronic health record and via phone call if patient does not have active electronic health record account. In conveying negative results, nurse counsels patient on continuing measures to reduce the spread of COVID and instructs patient to seek medical attention if symptoms change or worsen.

Responsibilities –

Hattiesburg Clinic P.A. – Provision of staff, supplies, electronic health record access and testing as outlined herein and in the Project Budget.

State / Local Government - will be responsible for the following,

- Testing space
- Security
- Advertising

Budget -

Personnel

Position	Hourly Rate	Hours Per Day	% of Day on Sponsored Project	Daily Budget	Funding Request	Match
Laboratory Technician - on site	\$ 31.00	7.00	100%	\$ 217	\$ 217	\$ -
Laboratory Technician - on site	\$ 31.00	7.00	100%	\$ 217	\$ 217	\$ -
Laboratory Technician - on site	\$ 31.00	7.00	100%	\$ 217	\$ 217	\$ -
Site Coordinator	\$ 23.00	7.00	100%	\$ 161	\$ 161	\$ -
Courier	\$ 16.00	4.00	100%	\$ 64	\$ 64	\$ -
Receptionist / Check-In	\$ 19.00	7.00	100%	\$ 133	\$ 133	\$ -
Receptionist / Check-In	\$ 19.00	7.00	100%	\$ 133	\$ 133	\$ -
Medical Assistant	\$ 28.00	7.00	100%	\$ 196	\$ 196	\$ -
Registered Nurse	\$ 40.00	7.00	100%	\$ 280	\$ 280	\$ -
Medical director	\$ 144.00	3.00	100%	\$ 432	\$ 432	\$ -
Total Personnel				\$ 2,050	\$ 2,050	\$ -

Fringe Benefits

With the exception of the medical director position, the fringe benefit rate requested is 25% of the personnel budget.

The fringe benefit rate for the medical director position is 1.45% of the personnel budget.

Total Fringe Benefits	\$ 411	\$ 411	\$ -
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Supplies

General office supplies, including educational materials, pens, clipboards

\$ 70 \$ 70

Personal protective equipment - staff

\$ 60 \$ 60

Personal protective equipment - patients [based on maximum capacity of 70 per day]

\$ 40 \$ 40

Laboratory testing, tube, swab, viral transport media [based on maximum capacity of 90 per day]

\$ 700 \$ 700

Total supplies	\$ 869	\$ 869	\$ -
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Reference laboratory testing service

Third party reference laboratory testing, AEL at inception [based on maximum capacity of 90 per day]

\$ 6,300 \$ 6,300 \$ -

Contracted housekeeping services	\$ 173	\$ 173	\$ -
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Indirect expense

Calculated as a % of direct labor expense - 12%

\$ 194 \$ 194 \$ -

Total cost per day

\$ 9,998 \$ 9,998 \$ -

PROFESSIONAL SERVICES AGREEMENT

COVID-19 Testing

This Professional Services Agreement (“Agreement”) is entered as of August 1, 2020, (“Effective Date”) by and between the **City of Hattiesburg, Mississippi**, a Mississippi municipal corporation (“**City**”), and **Hattiesburg Clinic Professional Association**, a Mississippi professional corporation (“**Clinic**”).

The Agreement arises from these circumstances:

The City of Hattiesburg and the entire globe are in the midst of a COVID-19 pandemic caused by the SARS-CoV-2 virus.

The Secretary of Health and Human Services (“HHS”) declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19. HHS, on July 23, 2020, has renewed its determination that a public health emergency exists nationwide due to COVID-19.

On March 13, 2020, the President of the United States issued a Proclamation on Declaring a National Emergency Concerning the COVID-19 Outbreak.

Similarly, the City declared the existence of a local emergency on March 13, 2020. Forrest County, Mississippi declared the existence of a local emergency as well on March 13, 2020, and the State of Mississippi declared a State of Emergency as a result of the COVID-19 outbreak on March 14, 2020. To date, these emergency declarations are ongoing.

To combat COVID-19, the Clinic has heretofore conducted public COVID-19 testing services at the City-owned C. E. Roy Community Center under a contract with the Mississippi State Department of Health, funded by a grant by an organ of the United States. That testing program has reached an end.

The City has determined that it is necessary to continue to take emergency protective measures at the direction and guidance of federal, state and local leaders, including public health officials, to prepare, contain and combat COVID-19. Therefore, the City seeks to continue this testing program to effectively test and diagnose COVID-19 infections for the benefit of its citizens.

The City has accordingly arranged to fund continued operation of the program on the terms following, and the Clinic desires to continue serving the program on such terms. The Parties understand that the City plans to utilize certain financial resources, including potentially Federal Emergency Management Agency (“FEMA”) Public Assistance funding and Coronavirus Aid, Relief, and Economic Security (“CARES”) Act funding, for operation of the testing program, including all ancillary services, personnel, equipment, and supplies needed to carry out the testing program. As such, the Parties agree to comply with Federal, State, and local laws, regulations, executive orders, FEMA policies, procedures, and directives that are made applicable by utilizing these financial resources.

Now, therefore, for good and valuable consideration, including the reciprocal promises set out here, the receipt and sufficiency of all of which both parties acknowledge, the City and the Clinic agree:

1. **Services.** The Clinic shall conduct a public COVID-19 testing program that follows the Plan set out in annexed Exhibit A, which is incorporated here by this reference (the “Services”). The Clinic shall provide the Services at the C. E. Roy Community Center and other off-site locations identified on Exhibit A, and the City shall provide the Clinic at the Roy Center, including reasonably required space, parking, utilities, and security.

2. **Personnel.** The Clinic shall supply all clinical personnel required by the program. All such personnel, before rendering any Services, shall have been credentialed by the Clinic, and each shall meet the credentialing standards the Clinic requires be met by one performing in such person’s role.

3. **Equipment and Supplies.** The Clinic shall supply all medical equipment and supplies required for the program.

4. **Period of Performance.** The Clinic shall begin performance on August 1, 2020, and shall continue performance indefinitely until this Agreement is terminated pursuant to Section 12.

5. **Compensation.** Upon the parties’ execution of this Agreement, the City shall reimburse the Clinic for the actual costs incurred to provide the Services as outlined in the budget schedule in Exhibit __ up to a maximum sum of \$10,000 per day throughout the duration of the Agreement. The Clinic shall submit to the City an invoice for the Services monthly, with sufficient detail of the Services performed, including, but not limited to, daily timesheets describing tasks performed per employee and the number of hours worked, and documentation substantiating the number of individuals tested on a daily basis. The City reserves the right to require additional documentation to verify the costs incurred and submitted by the Clinic to the City. Under no circumstances will the Clinic submit costs to the City based on a cost-plus-percentage-of-cost fee structure. The City shall pay the Clinic’s approved invoices within 30 days of receiving them. For such purposes, the parties shall use the respective addresses set out in the Notice Section of this Agreement.

6. **Notices.** Except for submission of invoices or payments, which may be transmitted by first-class USPS mail, all notices required or permitted to be given under this Agreement shall be given in writing either by personal delivery, or by USPS certified mail, return receipt requested, or by overnight courier, signature required, addressed as follows:

To City:

City of Hattiesburg
Attn: City Clerk
City Hall
200 Forrest Street
Hattiesburg, MS 39401

With a copy to Mayor at foregoing
address

To Clinic:

Hattiesburg Clinic, P.A.
Attn: Executive Director &
Chief Executive Officer
415 South 28th Avenue
Hattiesburg, MS 39401

Any such notice given by personal delivery shall be effective as of the date of delivery. Any such notice given by one of the other methods permitted above shall be deemed to have been effectively given and served as of the second day after the date of delivery to the United States Postal Service or to the selected overnight courier, with all required delivery costs duly paid. Each party may from time to time change its respective address above upon advance written notice of the change to the other party.

7. **Status of Parties.** In performing under this Agreement, the Clinic and its employees shall at all times be acting as and recognized as independent contractors of City. Nothing contained in this Agreement shall be construed to create a partnership, joint venture, agency or employment relationship between Clinic and City. Neither City nor Clinic shall have any responsibility for any of the other's debts, liabilities, or other obligations, or for the negligent or otherwise unlawful acts or omissions of the other or its employees or agents. In addition, neither party may bind the other in any way whatsoever in dealings with third parties. The Clinic retains sole and absolute discretion, control, and judgment in the manner and means of carrying out its assignments. Neither Clinic, nor its employees performing Services hereunder shall be entitled to any of the rights, fringe benefits and privileges established for City's employees, if any, including, but not limited to, the following: retirement benefits, medical insurance coverage, life insurance coverage, health insurance, disability insurance coverage, severance pay benefits, PTO, overtime pay, etc. Clinic understands that City will not pay or withhold from the compensation paid to Clinic pursuant to this Agreement any sums customarily paid or withheld for or on behalf of employees for income tax, unemployment insurance, social security, or payment pursuant to any law or governmental requirement, and all such payments as may be required by law are the sole responsibility of Clinic. Clinic agrees to indemnify and hold City harmless from and against any such payments or liabilities for which City may become liable with respect to such matters. Each party is responsible for its own acts or actions and for the actions of its employees or agents. As City is a municipality of the state, any liability claims against the City will be handled under the Mississippi Tort Claims Act, Mississippi Code 1972 Ann. §11-46-1 *et seq.*, subject to the Act's limitations.

8. **Confidentiality.** Clinic acknowledges that Mississippi state law governing public records and transparency applies to this Agreement

9. **Debarment and Suspension.** The Parties understand that the Services provided under this Agreement may be reimbursed using federal funding and agree that as such this Agreement may constitute a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Clinic is required to verify that none of the Clinic, its principals (defined at 2

C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The Clinic must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. The Clinic certifies that it:

(a) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

(b) has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;

(c) has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(d) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,

(e) has not, within a three-year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

The Clinic further certifies that no Clinic employee rendering Services under this Agreement falls into a category described and prohibited above.

A signed certification regarding debarment, suspension, and other responsibility matters is attached hereto as Appendix A. This certification is a material representation of fact relied upon by the City. If it is later determined that the Clinic did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the State and Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The Clinic agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this Agreement. The Clinic agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. Employment Verification. The Clinic shall comply with the Mississippi Employment Protection Act of 2008, Section 71-11-1 *et seq.* of the Mississippi Code 1972 Annotated, and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United

States Department of Homeland Security, also known as the E-Verify Program. Clinic shall maintain records of such compliance. Clinic warrants that any person assigned to perform Services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi.

11. **Assignment.** Neither party may assign or subcontract its rights or obligations to any third party without the advance, written consent of the other.

12. **Termination.**

(a) **Termination for Convenience.** Either party may terminate this Agreement with or without cause upon seven calendar days' written notice to the other. No early termination charges, fees, or penalties may be assessed against a party for terminating the contract.

(b) **Termination for Default by Clinic.** If the Clinic breaches this Agreement and the breach remains uncured seven or more calendar days after the City gives the Clinic notice of the breach, the City may terminate the Agreement immediately.

(c) **Termination for Default by City.** If the Clinic breaches this Agreement and the breach remains uncured seven or more calendar days after the Clinic gives the Clinic notice of the breach, the Clinic may terminate the Agreement immediately.

(d) **No Exclusive Remedy.** In the event of a termination for default, the aggrieved party, in addition to termination, shall retain and may exercise any other remedy provided by law or equity for relief from the default.

13. **INSURANCE**

(a) During the term of this Agreement, the Clinic shall maintain the following insurance coverage: (i) professional liability insurance coverage upon all Clinic personnel performing Services with annual liability limits of not less than \$2,000,000 per single claim and \$3,000,000 for multiple claims; (ii) general liability insurance coverage of its operations, including non-owned automobile coverage, with annual liability limits of not less than \$1,000,000 per single occurrence and \$2,000,000 for multiple occurrences; and workers' compensation insurance protection for its personnel in amounts prescribed by Mississippi law.

(b) The City, as a Mississippi municipal corporation, is covered for general liability and other risk exposure under the Mississippi Tort Claims Act, and it shall maintain the coverage provided by such Act during the term of this Agreement.

14. **Publicity.** The Parties' testing program requires publicity to achieve maximum public benefit and ensure the City tests and diagnoses as many COVID-19 infections as possible. The City shall be responsible for and in charge of publicity. The Clinic shall have the opportunity to approve in advance, in writing all program publicity using the Clinic's name, tradenames or marks, or other intellectual property.

15. **Indemnification.** The Clinic shall defend and indemnify the City against, and hold it harmless from, third-party claims of all kinds arising from the alleged negligence of other wrong of the Clinic or its employees or agents in the performance of this Agreement. Reciprocally, to the extent permissible under Mississippi law, the City shall defend and indemnify the Clinic against, and hold it harmless from, third-party claims of all kinds arising from the alleged negligence of other wrong of the City or its employees or agents in the performance of this Agreement. In carrying out the terms of these indemnification provisions, the parties agree that, with respect to any claim for which an Indemnitee is entitled to indemnification from the Indemnitor, Indemnitee will look first to any available insurance coverage of the indemnifying party for defense costs and indemnification related to the claim and will cooperate with the insurance carrier providing such insurance coverage to assure coverage for the claim and related claim expenses. The Indemnitee shall give Indemnitor prompt notice of any claim for which indemnity is sought and shall cooperate with the Indemnitor in the defense of the claim. Indemnitor shall be entitled to defend the claim with counsel of Indemnitor's choosing, provided that such counsel is reasonably acceptable to the Indemnitee, and, to the extent permissible under Mississippi law, Indemnitor shall have the right to control the defense and settlement of the claim.

16. **Clinic Employee Warranties.** Clinic warrants that Clinic, its officers, directors, employees, and agents (a) are not currently excluded, debarred, or otherwise ineligible to participate in any federal health care programs or any state healthcare programs; (b) have not been convicted of a criminal offense related to the provision of healthcare items or services and have not been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs or any state healthcare programs, (c) are not, nor have ever been included on the Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons list; (d) are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in Clinic being excluded from participation in the Federal Healthcare Programs or any state healthcare programs. These shall be ongoing representations and warranties during the term of this Agreement, and Clinic shall immediately notify City of any change in the status of the warranty set forth in this section. Any breach of this warranty shall give City the right to terminate this Agreement immediately, for cause.

17. **HIPAA.** Clinic shall fully comply with the Health Insurance Portability and Accountability Act of 1996 and its associated regulations and, more specifically, in 45 C.F.R. §§ 160 and 164, Standards for Privacy of Individually Identifiable Health Information, Final Rule (the "Final Privacy Rule"), and in 45 C.F.R. §§ 160, 162 and 164, Health Insurance Reform: Security Standards, Final Rule (the "Final Security Rule") collectively referred to as ("HIPAA") (as amended), as they may be applicable to Clinic. Clinic warrants that it has implemented safeguards to ensure that the privacy and confidentiality of patients' personal health information is protected. The Clinic shall receive Personal Health Information from patients participating in the testing program and shall store the PHI in it EPIC medical records system. The information shall become the property of the Clinic and shall be available thereafter only as provided by law.

18. **Force Majeure.** A "Force Majeure Event" means any act or event, whether foreseen or unforeseen, that meets all three of the following tests: (a) The act or event prevents a party in whole or in part from performing its obligations under this Agreement; or satisfying any conditions to the performing party's obligations under this Agreement; (b) The act or event is

beyond the reasonable control of and not the fault of the non-performing party; and (c) The non-performing party has been unable to avoid or overcome the act or event by the exercise of due diligence. Notwithstanding anything to the contrary in this Agreement or otherwise, a Force Majeure Event excludes economic hardship, changes in market conditions, or insufficiency of funds. Similarly, a Force Majeure Event will not include the COVID-19 health crisis, and the Clinic will not be excused from performance of its duties under this Agreement as a result of COVID-19. If a Force Majeure Event occurs, the non-performing party is excused from whatever performance is prevented by the Force Majeure Event to the extent prevented and satisfying whatever conditions precedent that cannot be satisfied. When the non-performing party is able to resume performance of its obligations under this Agreement or satisfy the conditions precedent to the performing party's obligations, it shall immediately give the performing party written notice to that effect and shall resume performance under this Agreement no later than three working days after the notice is delivered. This provision is the exclusive remedy available to the non-performing party with respect to a Force Majeure Event.

19. **Waiver.** No failure on the part of any party hereto 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 any right, power or remedy hereunder preclude any further or other exercise thereof or the exercise of any other right, power or remedy.

20. **Applicable Law/Choice of Forum.** This Agreement is governed and controlled by the applicable laws, ordinances, rules and regulations of the State of Mississippi, without regard to conflict-of-law principles. Any litigation with respect to this Agreement shall be brought in a court of competent jurisdiction sitting in Forrest County, Mississippi.

21. **Change in Law.**

(a) Notwithstanding any other provisions of this Agreement, if during the term hereof any Change of Law (defined below) results in an Adverse Consequence (defined below), the parties agree to make reasonable revisions to this Agreement to avoid such Adverse Consequences while seeking to maintain the parties as close as possible to their original positions despite such revisions. Upon notice by one party to another of such Change of Law, the parties agree that they shall attempt to resolve the matter within 30 days of such notice. If the parties cannot agree upon renegotiated terms hereunder within such 30-day period, then this Agreement will terminate immediately upon written notice by one party to the other of an inability to agree.

(b) As used herein, "Change of Law" shall mean: (A) any new legislation enacted by the federal government or the government of Mississippi; (B) any governmental agency law, rule, regulation or guideline; or (C) any judicial order or decree.

(c) As used herein, "Adverse Consequence" shall mean a Change of Law that prohibits, restricts, limits or otherwise affects either party's rights or obligations hereunder in a material manner or otherwise makes it desirable to restructure the relationship established hereunder because of material legal consequences, including loss of tax exempt status, expected to result from such Change of Law.

22. **City Status.** Clinic recognizes that the City, as a political subdivision of the State of Mississippi, is entering this Agreement only to the extent permissible by Mississippi law, including the opinions of the Mississippi Attorney General. Any provision of this Agreement that is in any respect not authorized by or is inconsistent with Mississippi law, including the opinions of the Mississippi Attorney General, is invalid.

23. **Severability.** If any provision of this Agreement shall be deemed to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable, provided the relative benefits and burdens of the parties under the Agreement may be maintained. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

24. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter herein and supersedes and replaces all prior negotiations, understandings, and agreements, written or oral, between the parties relating hereto. Any other agreements or understandings, whether written or oral, are hereby superseded. Any modification to the agreement shall only be effective if it is in writing and signed by a duly authorized representative of Clinic and an authorized signatory of City. Each party acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against City or Clinic on the basis of draftsmanship or preparation hereof. The Agreement may be executed in counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument.

25. **No Obligation by Federal Government.** The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, the Clinic, or any other party pertaining to any matter resulting from the Agreement.

26. **Program Fraud and False or Fraudulent Statements or Related Acts.** Clinic acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Clinic's actions pertaining to this Agreement.

27. **Access to Records.** The following access to records requirements apply to this Agreement:

a. Clinic agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Clinic which are directly pertinent to this Agreement, and not protected by any applicable privilege or confidentiality restrictions, for the purposes of making audits, examinations, excerpts, and transcriptions.

b. Clinic agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

c. Clinic agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

d. In compliance with the Disaster Recovery Act of 2018, the City and Clinic acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

28. Compliance with Clean Air and Clean Water Act.

a. CLEAN AIR ACT

i. Clinic agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

ii. Clinic agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Mississippi Emergency Management Agency, FEMA, and the appropriate Environmental Protection Agency Regional Office.

iii. Clinic agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

b. FEDERAL WATER POLLUTION CONTROL ACT

i. Clinic agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

ii. Clinic agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Mississippi Emergency Management Agency, FEMA, and the appropriate Environmental Protection Agency Regional Office.

iii. Clinic agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

29. Procurement of Recovered Materials.

a. In the performance of this Agreement, Clinic shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

i. Competitively within a timeframe providing for compliance with the contract performance schedule;

- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

b. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

c. Clinic also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

30. **Byrd Anti-Lobbying Amendment.**

a. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification found at APPENDIX A, 44 C.F.R. PART 18 (attached hereto as Appendix B). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

31. **Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**

a. If Clinic intends to subcontract any portion of the work covered by this Agreement, Clinic must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. A list of labor surplus areas is available from the Department of Labor at <https://www.doleta.gov/programs/lisa.cfm>. Affirmative steps must include:

b. Placing qualified small and minority businesses and women's business enterprises on solicitation lists

c. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

d. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

e. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and

f. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

32. Equal Employment Opportunity (applicable to contracts for “federally assisted construction contract” as defined in 41 C.F.R. § 60-1.3).

a. During the performance of this Contract, the Vendor/Contractor (“Contractor”) agrees as follows:

i. The Clinic will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Clinic will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Clinic agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

ii. The Clinic will, in all solicitations or advertisements for employees placed by or on behalf of the Clinic, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

iii. The Clinic will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Clinic's legal duty to furnish information.

iv. The Clinic will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Clinic's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

v. The Clinic will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

vi. The Clinic will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

vii. In the event of the Clinic's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Clinic may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

viii. The Clinic will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractors or vendor. The Clinic will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event the Clinic becomes involved in, or is threatened with, litigation with a subcontractors or vendor as a result of such direction by the administering agency, the Clinic may request the United States to enter into such litigation to protect the interests of the United States.

ix. The City further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work.

x. The City agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractor and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

xi. The City further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with contractors debarred from, or who has not demonstrated eligibility for, Government contracts and

federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the City agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the City under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such State; and refer the case to the Department of Justice for appropriate legal proceedings.

33. Contract Work Hours and Safety Standards Act (applicable to construction work over \$100,000 that involves the employment of laborers or mechanics).

a. Overtime requirements. No contractors or subcontractors contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section the Clinic and any subcontractors responsible therefor shall be liable for the unpaid wages. In addition, such Clinic and subcontractors shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

c. Withholding for unpaid wages and liquidated damages. FEMA or the State of Mississippi shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Clinic or its subcontractors under any such contract or any other Federal contract with the Clinic, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the Clinic, such sums as may be determined to be necessary to satisfy any liabilities of the Clinic or subcontractors for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

d. Subcontracts. The Clinic and its subcontractors shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Clinic

shall be responsible for compliance by any subcontractors or lower tier subcontractors with the clauses set forth in paragraphs (a) through (d) of this section.

34. Remedies.

a. If any work performed by the Clinic fails to meet the requirements of the Agreement, any other applicable standards, codes or laws, or otherwise breaches the Agreement, the City may exercise any remedies available to the City, including, but not limited to:

i. elect to have the Clinic re-perform or cause to be re-performed at the Clinic's sole expense, any of the work which failed to meet the requirements of the Agreement;

ii. hire another vendor/contractor to perform the work and deduct any additional costs incurred by the City as a result of substituting vendors/contractors from any amounts due to the Clinic; or

iii. pursue and obtain any and all other available legal or equitable remedies.

b. This Section shall in no way be interpreted to limit the City's right to pursue and obtain any and all other available legal or equitable remedies against the Clinic.

35. Changes.

a. Any changes to the scope of work, price, or schedule shall be agreed to by the Parties, in writing, before any change is to take effect. Any change not agreed to in writing by both Parties will have no application to this Agreement.

36. DHS Seal, Logo, and Flags.

a. The Clinic shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

[SIGNATURES ON FOLLOWING PAGE]

Witness execution by the parties on the dates shown below, but effective as the Effective Date shown above.

CITY OF HATTIESBURG, MISSISSIPPI

HATTIESBURG CLINIC PROFESSIONAL
ASSOCIATION

By: _____
Mayor

By: _____

Attest: _____
City Clerk

Title

Date: _____

Date: _____

APPENDIX A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the Clinic (referred to herein as the “prospective lower tier participant”) is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may

decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AN
VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Clinic Name

Name

Title

Signature

Date

APPENDIX B

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS,
AND COOPERATIVE CONTRACTS**

(to be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Contract.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Contracts) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The Clinic certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Clinic understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Clinic Name

Signature

Printed Name

Title

Date