

**West Jackson County Utility District
7200 McCann Road
Biloxi, Mississippi 39532
February 16, 2023**

Regular Meeting

MINUTES

1.0 Call Meeting to Order:

The West Jackson County Utility District (WJCUD) convened the scheduled board meeting February 16, 2023, at the WJCUD general office building, 7200 McCann Road, Biloxi, MS. The meeting was called to order by Mr. Mike Montgomery, Chairman of the Board at 9:05 A.M., and it was determined that a quorum was present. A notice was posted informing the public of the meeting time. The following individuals were present:

Mr. Mike Montgomery	Chairman, WJCUD
Mr. Andrew Westfall	Secretary/Treasurer, WJCUD
Mr. Curtis Spiers	Commissioner, WJCUD
Ms. Joan Strayham	Commissioner, WJCUD
Mr. Josh Danos	Board Attorney, WJCUD
Mr. John Hannah	Director, WJCUD
Mr. Jay Ruffin	Deputy Director, WJCUD
Ms. Laura Davis	Financial Controller, WJCUD
Ms. Amanda Parisi	Assets Manager, WJCUD
Ms. Whitney McCarra	Accountant II, WJCUD
Mr. Gerrod Kilpatrick	Machado Patano dba MP Design Group

Members of the Public:

Matthew Williams, Attorney at Galloway Law Firm
Dean Fletcher, Auditor at Fletcher & Co
Kearia Allen, 6617 Old Fort Bayou Road
Mike Keleher & Shellie Carter, 9617 Jean Street
Dennis and Tracy Lamey, 9888 Daisy Vestry Road
Ted Barrick, 13329 Hollow Oak Lane
Marty McGrath & Mike Nunmaker, Back Bay RV Resort

2.0 Invocation / Pledge of Allegiance

Opening Prayer was presented by Laura Davis.

3.0 Change to Meeting Agenda

4.0 Community Input

Ms. Kearia Allen, residing at 6617 Old Fort Bayou Road, addressed the Board regarding her high usage water bill. The Director will get additional information from the Billing & Customer Service Manager to determine Ms. Allen's options. As a result, Ms. Allen will be called to discuss further.

Mr. Mike Keleher addressed the Board concerning multiple accounts. Data logs will be pulled from May 2022 until current and the Director will meet with Mr. Keleher and WJCUD's Billing & Customer Service Manager to discuss further. Chairman of the Board requests update next month at our board meeting.

Mr. Dennis Lamey approached the Board and Director with documentation and addressed the Board regarding Lots 1, 2, & 3 of his land. Mr. Lamey would like to connect these properties to the WJCUD low pressure sewer line and water line that runs along Daisy Vestry Road. The Director cannot decide today but will look further into this and get with Mr. Lamey within the next week or two.

Mr. Ted Barrick addressed the Board regarding his high bill at 13329 Hollow Oak Lane. He stated the home is vacant and he pressure washed and watered the sod outside, but he is disputing the sewer charges. The Director said he would discuss this issue further with the Billing & Customer Service Manager and call Mr. Barrick back within a week.

5.0 Consent Agenda

5.1. Reading of Previous Minutes

5.2 Financial Reports

5.3 Purchase Requisitions

5.4 Docket of Claims

Lines 1 – 86 / \$2,606,577.20

5.5 Leak Credits

5.6 Grinder Station Approvals

Mr. Spiers made a motion, seconded by Mr. Westfall, approving the Consent Agenda as presented. Motion passed unanimously.

6.0 Old Business

6.1 Back Bay RV Resort – Memorandum of Agreement

Mr. Spiers made a motion, seconded by Mr. Westfall, approving a revised Memorandum of Agreement with Back Bay RV Resort including a revision to permit Back Bay RV

Resort to make payments due under the agreement in 12 monthly installments. Motion passed unanimously.

6.2 Water Facilities Plan, Contract B

Mr. Westfall made a motion, seconded by Ms. Strayham, approving CB Developers, Inc, Water Facilities Plans, Phase 4, Change Order No. 5 which results in the deduction of \$62,136.93, as recommended by Machado Patano, contingent upon approval by the Mississippi Department of Health, and having determined the following is true:

- The change order is made in a commercially reasonable manner and is not being made to circumvent the public purchasing statutes.
- The proposed change is necessary or incidental to the completion of the work as originally bid, is not outside the scope of the original contract, is commercially reasonable, and any increase in cost reasonable.

Motion passed unanimously.

Mr. Spiers made a motion, seconded by Ms. Strayham, approving CB Developers, Inc, Water Facilities Plans, Phase 4, Contract B, Pay Application No. 19 (FINAL) in the amount of \$212,865.80 as recommended by Machado Patano, contingent upon approval by the Mississippi Department of Health for currently reimbursable items. Motion passed unanimously.

6.3 Wastewater Facilities Plan, Phase III

Mr. Spiers made a motion, seconded by Mr. Westfall, approving an engineering agreement with Machado Patano for Wastewater Facilities Plan, Phase III with an amendment to eliminate the binding arbitration provision. Motion passed unanimously.

6.4 Wastewater Facilities Plan, Phase IV-B

Mr. Westfall made a motion, seconded by Mr. Spiers, approving an engineering agreement with Machado Patano for Wastewater Facilities Plan, Phase IV-B with an amendment to eliminate the binding arbitration provision. Motion passed unanimously.

6.5 Wastewater Facilities Plan, Phase V

Ms. Strayham made a motion, seconded by Mr. Spiers, approving an engineering agreement with Machado Patano for Wastewater Facilities Plan, Phase V with an amendment to eliminate the binding arbitration provision. Motion passed unanimously.

6.6 Automated Metering Infrastructure, Phase 1

Mr. Westfall made a motion, seconded by Ms. Strayham, approving DNP, Inc, Automated Meter Infrastructure (AMI) Project Phase I, Change Order No. 1, to reduce the contract by \$44,400 to a revised contract amount of \$159,600 contingent upon determining the following is true:

- The change order is made in a commercially reasonable manner and is not being made to circumvent the public purchasing statutes.
- The proposed change is necessary or incidental to the completion of the work as originally bid, is not outside the scope of the original contract, is commercially reasonable, and any increase in cost reasonable.

Motion passed unanimously.

6.7 Gravity Sewer Along Old Fort Bayou Road

Mr. Westfall made a motion, seconded by Ms. Strayham, adopting a resolution to acquire the 2 easements presented via the waiver valuation process pending title check. Motion passed unanimously.

7.0 New Business

7.1 Audit of FYE 09 30 2022 Financial Statements

Mr. Dean Fletcher with Fletcher & Company presented the FYE 09 30 2022 Audit to the Board. He stated that no findings were found, and he feels the Board has no reason for concern.

Mr. Spiers made a motion, seconded by Mr. Westfall, receiving and accepting the Audited Financial Statements for the year ending September 30, 2022. Motion passed unanimously.

7.2 Connection to JCUA Receiving MH at New JCUA PS #6

Mr. Spiers made a motion, seconded by Ms. Strayham, approving West Jackson County Utility District to sign an agreement with Jackson County Utility Authority in order to connect to a newly constructed pump station #6. Motion passed unanimously.

8.0 Correspondence

Included for the Board's review was the following:

- WJCUD letter (2022 12 20) – to Coastal Constructors, LLC regarding MOA – Alexis Crossing Subdivision PH 1
- WJCUD letter (2022 10 14 Bid) – to DNP Construction, Inc. regarding Notice of Award, AMI Tower, Phase 1
- MDOH letter (2023 01 27) – to WJCUD regarding 30-Day Deadline Warning – Contract B, Phase 4 SRF
- WJCUD letter (2023 02 06) – to Bordis & Danos regarding Possible pending litigation
- Jackson County Planning/Zoning Meeting Minutes 2022 01 19
- WJCUD to Fletcher and Company, PLLC, re representations made during WJCUD Audit FYE 09 30 2022
- MDOH Annual Report submittal violation and rescission

9.0 District Operations

9.1 Attorney Report

9.2 Director Report

Updates were given on the following:

- Jarrod Mathers – 14218 Oak View Circle – After a follow up with the insurance agency, it was determined that the agent initially working on the case is no longer

employed with the insurance agency. As a result, documents were forwarded to an active agent and the case is currently being reviewed.

- Miscellaneous construction contracts, Bottom 2 Top Construction, LLC
 - Phase 1 – Alexis Crossing MOA, completed pending outstanding balances and associated payments.
 - Phase 2 – Scarlett Glen MOA, Quail Creek LS abandonment, recently received US Army Corps of Engineers wetlands permit for stretch along Savannah Pines P/L
 - Phase 3 - Abandon Dove Plains LS, proceeding with construction prior to completion of Phase 2. Construction has turned out to be much more difficult with excavation in flowing sands formation. Greater difficulty causes slower progress and greater cost.
- Old Fort Bayou David Davis Outfall improvement project
 - Kickoff meeting held w/ MDEQ, Nicole Bleyart
 - MS Restore Act funded at \$1.3 million
- Follow up meeting with MDEQ regarding potential MS Restore Act funding:
 - Project A-Riviera LS and associated Porteaux Bay sewer collection systems
 - Project B-April Bayou LS & Bienville LS and associated collection systems
 - Project C-Cherry Park sewer collection system (Colonial Court, Larochelle, Bordeaux)
 - MDEQ opinion is that Project A & B are excellent projects for consideration.
- Billing Summary JAN 2023
 - \$904,901.83 (compared to \$795,511.21 in Jan 2022) – 13.7% increase
 - 8,414 active customers (compared to 8,242 in Jan 2022) – 2.1% growth
- Water Production – JAN 2023
 - 51.0 MG - Total Production
 - 55.1 MG – Water Sold
 - 4.1 MG – Flushing
 - 2.8 MG – Unaccounted For
- FY 2023 Income Statement – four months ending Jan 31, 2023
- Liquid Assets
 - FY 2023 four months ending Jan 31, 2023
- Jarvis Subdivision proposed along Daisy Vestry Road

10.0 Executive Session – If So Move

Mr. Spiers made a motion, seconded by Ms. Strayham, to enter closed session. Motion passed unanimously.

Mr. Westfall made a motion, seconded by Ms. Strayham, to enter executive session to discuss JCUA and Miller Construction litigation and potential litigation relating to Alexis Crossing. Motion passed unanimously.

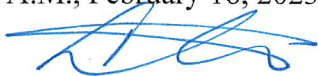
Mr. Westfall made a motion, seconded by Mr. Spiers, to authorize a settlement demand against a possible defendant, collectively. In the Miller Construction litigation, \$5.6 Million to settle all claims asserted and to engage in mediation thereafter. Motion passed unanimously.

Mr. Spiers made a motion, seconded by Mr. Westfall, to enter open session. Motion passed unanimously.

11.0 Other Business

12.0 Adjournment

A motion was made by Mr. Spiers, seconded by Mr. Westfall, to adjourn the meeting at 11:20 A.M., February 16, 2023. Motion passed unanimously.



Andrew Westfall
SECRETARY/TREASURER, WJCUD

ORDER NUMBER 05

WHEREAS, the West Jackson County Utility District (hereinafter, "the District") has entered Contract B with CB Developers, Inc. (hereinafter, "CBD") relating to Water Facilities Plans, Phase 4; and

WHEREAS, Staff requests Board consideration and approval of **Contract B Change Order #5** as recommended by Machado Patano, contingent upon MDEQ approval, which result in a deduction of \$62,136.93; and

WHEREAS, the Board of Commissioners hereby finds that approval of this request is in the best interests of the District;

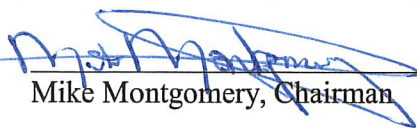
IT IS THEREFORE ORDERED by the Board of Commissioners of West Jackson County Utility District, that Contract B Change Order #5 is hereby approved and authorized, contingent upon MDEQ approval.

IT IS FURTHER ORDERED that the Director is authorized to execute any and all documents necessary for this purpose.

The motion to approve the foregoing Order was made by A. Westfall, seconded by J. Strayham, and the following vote was recorded:

Chairman Montgomery YES
Commissioner Spiers YES
Commissioner Strayham YES
Commissioner Westfall YES
Commissioner David Absent

WHEREUPON, the Board of Commissioners of West Jackson County Utility District, declared the motion carried and the Order adopted this the 16th day of February, 2023.


Mike Montgomery, Chairman

ATTEST:





ORDER NUMBER 00

WHEREAS, the West Jackson County Utility District (hereinafter, "the District") has entered Contract B with CB Developers, Inc. (hereinafter, "CBD") relating to Water Facilities Plans, Phase 4; and

WHEREAS, Staff requests Board consideration and approval of **Pay Application No. 19** in the amount of **\$212,865.80** as recommended by Machado Patano, contingent upon approval by the Mississippi Department of Health for currently reimbursable items; and

WHEREAS, the Board of Commissioners hereby finds that approval of this request is in the best interests of the District;

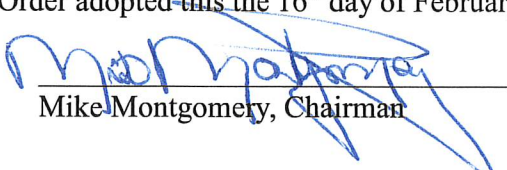
IT IS THEREFORE ORDERED by the Board of Commissioners of West Jackson County Utility District, that Pay Application 19 (FINAL) is hereby approved and authorized, contingent upon approval by the Mississippi Department of Health for currently reimbursable items.

IT IS FURTHER ORDERED that the Director is authorized to execute any and all documents necessary for this purpose.

The motion to approve the foregoing Order was made by C. Spiers, seconded by J. Strayham, and the following vote was recorded:

Chairman Montgomery Yes
Commissioner Spiers Yes
Commissioner Strayham Yes
Commissioner Westfall Yes
Commissioner David Absent

WHEREUPON, the Board of Commissioners of West Jackson County Utility District, declared the motion carried and the Order adopted this the 16th day of February, 2023.


Mike Montgomery, Chairman

ATTEST:





ORDER NUMBER 07

WHEREAS, the West Jackson County Utility District (hereinafter, "the District") intends to proceed with the Wastewater Facilities Plan, Phase III ("the Project"), as more fully defined in the attached documentation; and

WHEREAS, to complete the Project, engineering services are required; and

WHEREAS, pursuant to MDEQ regulations pertaining to SRF projects such as this, engineering services must be procured in a competitive manner; and

WHEREAS, a competitive selection process was followed, and the Board awarded the Project to Machado Patano; and

WHEREAS, Machado Patano has provided the attached contract under which such services will be provided; and

WHEREAS, the Board of Commissioners hereby finds that approval of this contract is in the best interests of the District;

IT IS THEREFORE ORDERED by the Board of Commissioners of West Jackson County Utility District, that the attached contract with Machado Patano is approved, with the arbitration provision to be removed.

IT IS FURTHER ORDERED that the Director is authorized to execute any and all documents necessary for this purpose.

The motion to approve the foregoing Order was made by C. Spiers, seconded by A. Westfall, and the following vote was recorded:

Chairman Montgomery yes


Commissioner Spiers yes

Commissioner Strayham yes


Commissioner Westfall yes

Commissioner David Absent

WHEREUPON, the Board of Commissioners of West Jackson County Utility District, declared the motion carried and the Order adopted this the 16th day of February, 2023.


Mike Montgomery, Chairman

ATTEST:





ORDER NUMBER 08

WHEREAS, the West Jackson County Utility District (hereinafter, "the District") intends to proceed with the Wastewater Facilities Plan, Phase IV-B ("the Project"), as more fully defined in the attached documentation; and

WHEREAS, to complete the Project, engineering services are required; and

WHEREAS, pursuant to MDEQ regulations pertaining to SRF projects such as this, engineering services must be procured in a competitive manner; and

WHEREAS, a competitive selection process was followed, and the Board awarded the Project to Machado Patano; and

WHEREAS, Machado Patano has provided the attached contract under which such services will be provided; and

WHEREAS, the Board of Commissioners hereby finds that approval of this contract is in the best interests of the District;

IT IS THEREFORE ORDERED by the Board of Commissioners of West Jackson County Utility District, that the attached contract with Machado Patano is approved, with the arbitration provision to be removed.

IT IS FURTHER ORDERED that the Director is authorized to execute any and all documents necessary for this purpose.

The motion to approve the foregoing Order was made by A. Westfall, seconded by C. Spiers, and the following vote was recorded:

Chairman Montgomerly yes

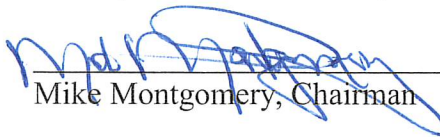
Commissioner Spiers yes

Commissioner Strayham yes

Commissioner Westfall yes

Commissioner David Absent

WHEREUPON, the Board of Commissioners of West Jackson County Utility District, declared the motion carried and the Order adopted this the 16th day of February, 2023.


Mike Montgomery, Chairman

ATTEST:





ORDER NUMBER 09

WHEREAS, the West Jackson County Utility District (hereinafter, "the District") intends to proceed with the Wastewater Facilities Plan, Phase V ("the Project"), as more fully defined in the attached documentation; and

WHEREAS, to complete the Project, engineering services are required; and

WHEREAS, pursuant to MDEQ regulations pertaining to SRF projects such as this, engineering services must be procured in a competitive manner; and

WHEREAS, a competitive selection process was followed, and the Board awarded the Project to Machado Patano; and

WHEREAS, Machado Patano has provided the attached contract under which such services will be provided; and

WHEREAS, the Board of Commissioners hereby finds that approval of this contract is in the best interests of the District;

IT IS THEREFORE ORDERED by the Board of Commissioners of West Jackson County Utility District, that the attached contract with Machado Patano is approved, with the arbitration provision to be removed.

IT IS FURTHER ORDERED that the Director is authorized to execute any and all documents necessary for this purpose.

The motion to approve the foregoing Order was made by J. Strayham, seconded by C. Spiers, and the following vote was recorded:

Chairman Montgomery Yes

Commissioner Spiers Yes

Commissioner Strayham Yes

Commissioner Westfall Yes

Commissioner David Absent

WHEREUPON, the Board of Commissioners of West Jackson County Utility District, declared the motion carried and the Order adopted this the 16th day of February, 2023.


Mike Montgomery, Chairman

ATTEST:


Amanda M. Parisi



ORDER NUMBER 10

WHEREAS, the West Jackson County Utility District (hereinafter, "the District") has submitted a request for bids relating to Phase 1 of the Automated Meter Infrastructure (AMI) Project; and

WHEREAS, the contract for the Project was awarded to DNP, Inc. (hereinafter, "DNP"); and

WHEREAS, Staff requests Board consideration and approval of **Change Order No. 1**, as presented; and

WHEREAS, the Board of Commissioners hereby finds that approval of this request is in the best interests of the District; and

WHEREAS, the Board of Commissioners hereby finds that approval of this request is commercially reasonable and not for the purpose of circumventing the state bidding laws;

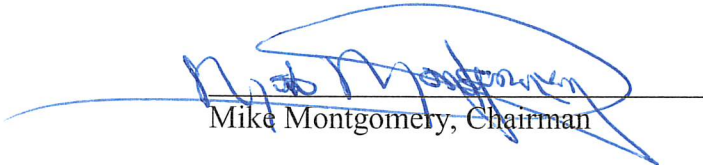
IT IS THEREFORE ORDERED by the Board of Commissioners of West Jackson County Utility District, that Change Order 1 is hereby approved and authorized.

IT IS FURTHER ORDERED that the Director is authorized to execute any and all documents necessary for this purpose.

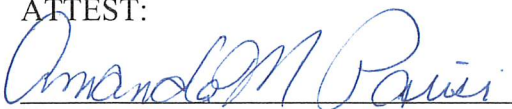
The motion to approve the foregoing Order was made by A. Westfall, seconded by J. Strayham, and the following vote was recorded:

Chairman Montgomery yes
Commissioner Spiers yes
Commissioner Strayham yes
Commissioner Westfall yes
Commissioner David Absent

WHEREUPON, the Board of Commissioners of West Jackson County Utility District, declared the motion carried and the Order adopted this the 16th day of February, 2023.


Mike Montgomery, Chairman

ATTEST:





ORDER NUMBER 11

WHEREAS, West Jackson County Utility District (hereinafter, "the District") is required to have its books audited annually;

WHEREAS, the District has retained a firm to perform such an audit, and these services are complete;

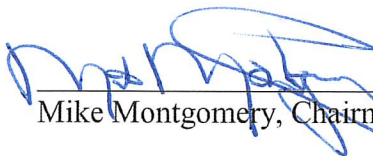
IT IS THEREFORE ORDERED by the Board of Commissioners of West Jackson County Utility District, that the Audited Financial Statements for the year ended September 30, 2022 is hereby received and accepted.

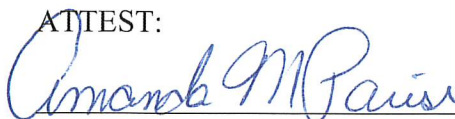
IT IS FURTHER ORDERED that the Director is authorized to execute any and all documents necessary for this purpose.

The motion to approve the foregoing Order was made by C. Spiers, seconded by A. Westfall, and the following vote was recorded:

Chairman Montgomery yes
Commissioner Spiers yes
Commissioner Strayham yes
Commissioner Westfall yes
Commissioner David Absent

WHEREUPON, the Board of Commissioners of West Jackson County Utility District, declared the motion carried and the Order adopted this the 16th day of February, 2023.


Mike Montgomery, Chairman

ATTEST:




ORDER NUMBER 12

WHEREAS, the West Jackson County Utility District (hereinafter, "the District") has received an agreement from Jackson County Utility Authority (hereinafter, "JCUA") in order to connect to newly constructed pump station 6; and

WHEREAS, Staff has reviewed the agreement and recommends approval; and

WHEREAS, the Board of Commissioners hereby finds that approval of this agreement is in the best interests of the District;

IT IS THEREFORE ORDERED by the Board of Commissioners of West Jackson County Utility District, that the JCUA Agreement, is hereby authorized and approved, as presented.

IT IS FURTHER ORDERED that the Director is authorized to execute any and all documents necessary for this purpose.

The motion to approve the foregoing Order was made by C. Spiers, seconded by J. Strayham, and the following vote was recorded:

Chairman Montgomery Yes

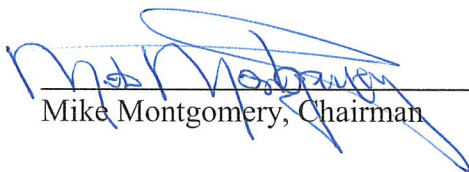
Commissioner Spiers Yes

Commissioner Strayham Yes

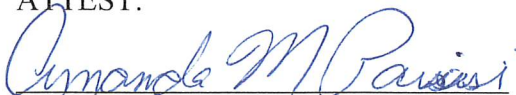
Commissioner Westfall Yes

Commissioner David Absent

WHEREUPON, the Board of Commissioners of West Jackson County Utility District, declared the motion carried and the Order adopted this the 16th day of February, 2023.


Mike Montgomery, Chairman

ATTEST:


Amanda M. Parisi



JACKSON COUNTY, MISSISSIPPI
WEST JACKSON COUNTY UTILITY DISTRICT

**RESOLUTION ADOPTING WAIVER VALUATIONS
OLD FORT BAYOU ROAD PROJECT**

Pursuant to the Waiver Valuation procedures previously adopted, the following acquisitions have been submitted to the District for approval:

- | | | |
|-----------------------------|---|-------------|
| 1. 7212 Old Fort Bayou Road | Joe Lee Cates Asher | \$ 1,760.32 |
| 2. 7304 Old Fort Bayou Road | Terral A. Callergari, Jr. and
Licia Callergari | \$ 1,955.26 |

The District, having had the opportunity to review the Waiver Valuations prepared by Ms. Mary Ann Clisby, a local realtor familiar with real estate values in the area of the project, and determining that the acquisitions are uncomplicated, hereby accepts and approves the above-referenced valuations, and authorizes its employees, agents, or attorneys, as the case may be, to make offers to purchase the required easements for the values stated above.

The above and foregoing Resolution introduced by A. Westfall, seconded by J. Strayham, and was adopted by the following vote, to-wit:

Yeas:	Nays:	Absent:
C. Spiers		B. David
J. Strayham		
M. Montgomery		
A. Westfall		

The Chairman hereby declared the Motion carried and the Resolution was adopted, this the 16th day of February, A.D., 2023.



[Signature]
Chairman

[Signature]
Notary Public



West Jackson County Utility District

Physical Address:
7200 McCann Road
Biloxi, MS 39532

Mailing Address:
P.O. Box 1230
Ocean Springs, MS 39566-1230

Phone (228) 872-3898

www.wjcupd.com

Fax (228) 872-3861

BOARD MEETING SIGN IN SHEET

DATE 2/16/2023

1: Matt Williams

2: DEAN FLETCHER

get w/ task 3: Kearia Allen 1617 Old Fort Bayou Rd Ocean Springs MS 39564

4: Shelie Carter

5: Mike Keleher

6: DENNIS LAMEY 9886 DAISY VESTRY RD
Biloxi MS 39532

7: Tracy Lamey " " "

get w/ task 8: Ted Barrick 13329 Hollow Oak Ln. Ocean Springs

9: MARTY MCGLOTH BBRVR

10: MELBA NUNAMAKER BBRVR

West Jackson County Utility District
Docket of Claim
As of February 16, 2023

	Vendor			
1	Ace Data Storage, Inc.	30.00		30.00
2	AGJ Systems & Networks (2 invoices)	3,272.25		3,272.25
3	Allied Univerdal Corporation (2 invoices)	4,800.00		4,800.00
4	Amazon- Business	1,350.49	Paid Online	1,350.49
5	AnSer	1,819.98		1,819.98
6	Asher, JoLee (easement purchase)	1,760.32		1,760.32
7	Astro Ford	184.51		184.51
8	Bay Pest Control	75.00		75.00
9	Blossman Gas, Inc. (2 invoices)	500.00		500.00
10	Blue Cross Blue Shield	24,274.57	Auto Draft	24,274.57
11	Bordis & Danos	5,000.00		5,000.00
12	Bottom 2 Top Construction (9 invoices)	146,281.20		146,281.20
13	C Spire	410.53	Auto Draft	410.53
14	Callegari, Licia (easement purchase)	977.63		977.63
15	Callegari, Terral (easement purchase)	977.63		977.63
16	Cardmember Service / Elan CC	1,188.16	Paid Online	1,188.16
17	Centerpoint Energy (3 invoices)	459.98	Auto Draft	459.98
18	Cintas Corporation (5 invoices)	1,671.80		1,671.80
19	Clisby, Mary Ann	1,750.00		1,750.00
20	Coast Chlorinator & Pump Co. (2 invoices)	2,323.00		2,323.00
21	Consolidated Pipe & Supply (12 invoices)	61,536.65		61,536.65
22	CUSI	87.40		87.40
23	D&H Auto Repair/Donald Hilderbrand	150.00		150.00
24	David, Bryan	40.00	DD	40.00
25	Delta World / GB Auto	59.27		59.27
26	DMS Mail Management	3,759.12	Auto Draft	3,759.12
27	Dunn Utility Products	9,089.71		9,089.71
28	FedEx	41.53	Paid Online	41.53
29	First Advantage Background	41.02		41.02
30	Flower Basket Florist	75.00		75.00
31	Fuelman (4 invoices)	3,559.25	Paid Online	3,559.25
32	Galloway Johnson Tompkins Burr & Smith	222.00		222.00
33	Grease Monkey/Fullspeed Automotive (4 invoices)	388.34		388.34
34	Guardian	2,858.86	Auto Draft	2,858.86
35	Gulf Breeze Landscaping	500.00		500.00
36	Gulf Coast Pump (2 invoices)	6,165.00		6,165.00
37	Gulf South Janitorial / Nicole Regan	950.00		950.00
38	ISCO Metals & Supplies	980.00		980.00
39	IVR Technology Group, LLC	274.90		274.90
40	Jack Henry	120.10	Auto Draft	120.10
41	Jackson County - Josh Eldridge	207.50		207.50
42	Jackson County Utility Authority	201,210.00		201,210.00
43	Jay Lee Company (6 invoices)	2,437.50		2,437.50
44	Kloud 7 LLC	253.02		253.02

West Jackson County Utility District
Docket of Claim
As of February 16, 2023

	Vendor			
45	Lennys (Mr.) Technet Automotive	423.52		423.52
46	Lowes CC	162.80	Paid Online	162.80
47	Machado Patano, PLLC (5 invoices)	54,350.00		54,350.00
48	Magnolia Consultants, LLC	1,750.00		1,750.00
49	McClatchy Company LLC	156.78		156.78
50	Micro-Methods, LLC (2 invoices)	120.00		120.00
51	Mississippi Power	150.88	Auto Draft	150.88
52	Mobile Solvent and Supply, Inc.	3,960.00		3,960.00
53	Montgomery, Michael	40.00	DD	40.00
54	MS Utilities / Fergusons (14 invoices)	9,317.42		9,317.42
55	Office Depot (3 invoices)	305.97		305.97
56	Petty Cash	79.24		79.24
57	Power Systems of MS, LLC	758.00		758.00
58	Richard & Sons Hauling (6 invoices)	14,424.50		14,424.50
59	Sam's Club	259.62	Paid Online	259.62
60	Singing River Electric (3 invoices)	18,391.66	Auto Draft	18,391.66
61	Singing River Health System (2 invoice)	298.50		298.50
62	Sorg Printing	92.00		92.00
63	South Ms. Business Machines	269.49		269.49
64	Southern LINC	658.58		658.58
65	Southern Tire Mart (2 invoices)	1,689.78		1,689.78
66	Staples, Inc. (4 invoices)	777.24		777.24
67	Strayham, Joan	40.00	DD	40.00
68	Uniti Fiber / Southern Lights	525.00		525.00
69	Verizon Connect Fleet (2 invoices)	79.50		79.50
70	Waste Pro	300.74	Auto Draft	300.74
71	Westfall, Andrew	40.00	DD	40.00
72	Deposit Refunds	\$11,920.86		11,920.86
TOTAL ACCOUNTS PAYABLE		\$615,455.30		\$615,455.30
	Notes Payable, P/R, Taxes			
73	Payrolls 01/30/23 & 2/13/23 NET	\$85,818.94	DD	\$85,818.94
74	Payroll 941 taxes 01/30/23 & 2/13/23	\$25,012.20	Paid Online	\$25,012.20
75	PERS contributions JAN 2023	\$32,349.38	Paid Online	\$32,349.38
76	MS Dept of Revenue-JAN 2023 PR Tax Whldg	\$3,991.00	Paid Online	\$3,991.00
77	MS Dept of Revenue JAN 2023 SALES TAX	\$6,535.76	Paid Online	\$6,535.76
78	First Heritage Credit of MS - Garnishment	\$503.73	Check	\$503.73
79	MSDH- Garnishment	\$344.34	Paid Online	\$344.34
80	AFLAC (Employee Funded)	\$2,189.19	Paid Online	\$2,189.19
81	MSDEQ C280870-04-02	\$18,783.65		\$18,783.65
82	MSDEQ C280870-02-02	\$12,245.38		\$12,245.38
83	MSDEQ C280870-03-02	\$39,896.42		\$39,896.42
84	MSDH Loans -03,04, 05, 06 & 07	\$66,403.48		\$66,403.48
	Total N/P, P/R & Taxes	\$294,073.47		\$294,073.47
TOTAL OPERATING FUNDS DOCKET		\$909,528.77		\$909,528.77

West Jackson County Utility District

Docket of Claim

As of February 16, 2023

	Vendor			
	CONSTRUCTION PAYMENTS			
	<u>APPROVED BY BOARD: 1/19/23</u>			
85	CB Developers SWR PH 4A Pay App #2	\$138,131.44		\$138,131.44
				\$0.00
	TOTAL CONSTRUCTION PAYMENTS			\$138,131.44
	MISCELLANEOUS			
	<u>APPROVED BY BOARD 12/15/2022 (PAID 1/30/23)</u>			
86	CB Developers SWR PH 4A Pay App #1	\$1,558,916.99		\$1,558,916.99
	TOTAL MISC			\$1,558,916.99
	TOTAL DOCKET			\$2,606,577.20

**REVISED MEMORANDUM OF AGREEMENT
BETWEEN WEST JACKSON COUNTY UTILITY DISTRICT
AND BACK BAY RV RESORT, LLC**

This Revised Memorandum Agreement is made and entered into by West Jackson County Utility District (hereinafter, "the District") and Back Bay RV Resort, LLC (hereinafter, "Owner/Developer") on the 16th day of February 2023 for the purpose of facilitating the development of certain real property identified herein.

The Revised Agreement is as follows:

WHEREAS, the Owner/Developer and the District previously entered a Memorandum of Agreement relating to the development of a four (4) phased RV campsite resort, attached as "Exhibit A"; and

WHEREAS, the Owner/Developer now desires to amend that agreement based on a scaled-back projected development consisting only of Phases 1 and 2; and

WHEREAS, the Owner/Developer hereby represents it is abandoning any development of the property located within Phases 3 and 4 until such time as a new or revised Memorandum of Agreement can be entered with the District; and

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Owner/Developer and the District hereby agree as follows:

1. The Owner/Developer's responsibilities are as follows:
 - a. Owner/Developer shall be responsible for paying the District water capacity fees for 147 hookups within Phases 1 and 2, in addition to a clubhouse hookup, at a rate of \$400.00/unit (Owner/Developer will receive a credit for those water capacity fees already paid under the original memorandum of agreement).
 - b. Owner/Developer shall be responsible for paying the District sewer capacity fees for 147 hookups within Phases 1 and 2, in addition to a clubhouse hookup, at a rate of \$400.00/unit (Owner/Developer will receive a credit for those water capacity fees already paid under the original memorandum of agreement).
 - c. Upon execution of this Agreement, Owner/Developer will convey to the District fee simple ownership of the lift station parcel reflected on the attached survey.
 - d. Upon execution of this Agreement, Owner/Developer will convey to the District utility easements 1 and 2, as reflected on the attached survey.
 - e. If not already complete, Owner/Developer shall design, purchase, construct, and install on-site water and sewer infrastructure in accordance with the District's standard criteria for such

developments, in addition to any other criteria hereinafter imposed by the District.

- f. Owner/Developer is responsible for any and all further permitting and regulatory approval necessary to complete all such relevant improvements.
- g. Owner/Developer agrees to waive all other consideration and benefits to which it was entitled under the original Memorandum of Agreement.

2. The District's responsibilities are as follows:

- a. The District agrees to continue to provide water and wastewater services to Phases 1 and 2 of the development, and to bill routine water and sewer charges to the Owner/Developer and/or any assignees or subsequent owners based on the usage rates adopted by the District (which are subject to change) based on a reading of the development master meter. District shall have no obligation to read, replace, or maintain any individual meters associated within the development.
- b. The District agrees to waive all other consideration and benefits to which it was entitled under the original Memorandum of Agreement based specifically on the representation of Owner/Developer that it will not develop the real property located within Phases 3 and 4 originally anticipated under such Agreement.

3. General Terms and Conditions:

- a. The parties hereto agree that the terms of this Agreement are contractual and not mere recitals.
- b. Failure of the Owner/Developer to perform any or all of the obligations referenced herein may result in the termination thereof by the District at its option.
- c. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and assigns.
- d. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes.
- e. This Agreement shall be governed and construed under the laws of the State of Mississippi.
- f. This Agreement constitutes the entire agreement between the parties, and each party acknowledges that there are no other or further agreements not expressly included herein, and that this Agreement may be modified, altered or amended only in writing, duly notarized and signed by each in the form of this original.
- g. Each party agrees that he/she/it will sign and execute any further or additional documents or other legal documents as may be necessary to consummate the provisions of this Agreement.

h. This Agreement may be executed in a number of counterparts and each counterpart shall be considered as an original and have the same force and affect as an original.

i. Owner/Developer may be served with this agreement and any notices related thereto at:

Back Bay RV Resort, LLC
6505 Riviera Dr.
Biloxi, MS 39532

j. West Jackson County Utility District may be served with this agreement and my notices related thereto at:

Director
West Jackson County Utility District
7200 McCann Rd.
Biloxi, MS 39532

k. Should any portion of this agreement be deemed illegal by a Court of competent legal jurisdiction, or by any state agency, including but not limited to the attorney general's office or the state auditor's office, the obligations and recitals contained herein shall become void and unenforceable.

DATED, this the _____ day of February, 2023.

Back Bay RV Resort, LLC

West Jackson County Utility District

By:
Authorized Agent

By: John Hannah, Director

STATE OF Mississippi

COUNTY OF Jackson

PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, the within named John Hannah, who acknowledged to me that he, as a duly authorized agent of West Jackson County Utility District, has the authority to bind said entity as Director, and in such capacity signed, sealed, delivered, and executed the above and foregoing instrument on the date therein as the act and deed of West Jackson County Utility District, after first having been duly authorized by said entity, so to do.

GIVEN UNDER MY HAND AND OFFICIAL SEAL OF OFFICE, this the ____ day of

_____, A.D., 2023.

Amanda M. Parisi

NOTARY PUBLIC

My Commission Expires: 11/19/2024



STATE OF Mississippi

COUNTY OF Jackson

PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, the within named _____, who acknowledged to me that he, as a duly authorized member or manager of Back Bay RV Resort, LLC, has the authority to bind said entity as owner/developer of the above-described property, and in such capacity signed, sealed, delivered, and executed the above and foregoing instrument on the date therein as the act and deed of Back Bay RV Resort, LLC, after first having been duly authorized by said entity, so to do.

GIVEN UNDER MY HAND AND OFFICIAL SEAL OF OFFICE, this the ____ day of

_____, A.D., 2023.

Amanda M. Parisi

NOTARY PUBLIC

My Commission Expires: Nov. 19, 2024



January 13, 2023

West Jackson County Utility District
John Hannah, P.E.
7200 Mc Cann Road
Biloxi, MS 39532

VIA EMAIL: jhannah@wjcud.com

RE: Engineering Proposal for Sewer Facilities Plan – PH III –Design & Construction Phase Services

Mr. Hannah:

Per your request, we are pleased to provide you with a proposal for professional services for the above referenced project. This proposal is for and construction phase services only for a new MDEQ-SRF funded sewer facilities plan “Wastewater Facilities Plan PH IV B”. The design for this phase has previously been completed by Machado Patano. This work will be performed under the direct supervision of Gerrod W. Kilpatrick, P.E., MS License # 16559. We have prepared a detailed scope of work and fee proposal for your review. For a detailed scope of work, see below:

The loan recipient and its vendors acknowledge and agree that the MDEQ is not a party, in any way whatsoever, to the contract between the Loan Recipient and its vendor. The Loan Recipient and its vendors acknowledge and agree that the role of the Department is strictly that of a lender, that the vendors are not and are not intended to be considered a third party beneficiary under any agreement between the Department and the Loan Recipient. Additionally, the Loan Recipient and its vendors acknowledge and agree that any action taken by the Department in its role of administrator for the revolving loan programs, or in its separate and distinct role as regulator, shall not in any way change or alter its position as that lender.

The Department of Environmental Quality is not a party to any of the Loan Recipient’s contracts and will not review, comment, approve, or discuss the merits of any contract claims presented by or to any party. Any Department reviews, approvals, observations, presence at meetings, written communications, verbal communications or other actions are not to be interpreted as addressing the merits of any claims, nor are they to be construed as interpreting the contract between the Loan Recipient and the vendor or any other parties.

MDEQ and its representatives may have access to and the right to audit, inspect, copy and examine books, financial records and other documents relating directly to the receipt and disbursement of WPCRLF funds.

SCOPE OF WORK

Task 1 – Design Phase Services

M|P will provide the necessary design drawings and specifications to implement the new sewer infrastructure as specified in the “Facilities Plan” for the area depicted as PH V.

Scope shall include:

- Sanitary sewer design, which will include gravity and or force main design.
- Sanitary sewer lift station design
- Grading and drainage
- Plan and Profiles sheets of proposed design
- Erosion control
- Overall Utility Plan
- Lift Station Electrical and controls plan
- Necessary topographic survey information will be obtained
- Obtain necessary MDEQ Sanitary Sewer Permits
- Construction Details
- Technical Specifications
- Provide necessary documentation for SRF Reimbursement

Task 2 – Bid & Construction Phase Services – PH III

M|P will perform Construction Phase Services for the duration of the construction period. Scope shall include:

- Provide Full Time Resident Project Representative (RPR) for the duration of the construction
- Review Technical submittals
- Review and provide response to all RFI's
- Provide Field Directives (as needed)
- Review Pay Applications
- Assist in Project Closeout
- Provide As-Built Record Drawings at Construction Completion
- Provide necessary documentation for SRF Reimbursement

Task 3 – Special Services – PH III (As Required)

M|P will perform the following Special Services. Fees will be determined once a defined scope of work is determined.

1. Property acquisition surveys (M|P will perform)
2. Wetland Delineation Services (thru a sub-consultant)

3. Endangered Species Surveys (thru a sub-consultant)
4. Archeological Studies (thru a sub-consultant)
5. USCAE Wetland Permitting, if required (thru a sub-consultant)
6. Geotechnical Investigation, if required (thru a sub-consultant)
7. Land Appraisal Services (thru a sub-consultant)

I. DESIGN FEE PROPOSAL

Task 1 – Design Phase Services (Phase III)	Per Attached SRF Fee Curve
Task 2 – Bid & Construction Phase Services (Phase III)	Per Attached SRF Fee Curve
Task 3 – Special Services	Cost will be provided per task

***Fees for Task 1 & Task 2 will be determined from SRF Fee Curve (Appendix E). This will be adjusted to match the actual construction cost.*

II. ASSUMPTIONS

- WJCUD will provide necessary maps in ACAD/GIS Format.
- WJCUD will provide their standard details and specifications.
- WJCUD will provide a copy of all environmental approvals
- WJCUD will provide all land acquisition documents (easements, right of ways, surveys, etc.)
- WJCUD will provide a copy of the approved Facility Plan.

III. EXCLUSIONS(available at additional cost or at M|P Standard Hourly and Reimbursement Schedule)

- Permit & Application Fees
- Legal Services
- Land Acquisition Services (negotiating with landowners)

*** Any additional services requested outside this scope will be billed based on our unit price schedule.*

IV. SCHEDULE

M|P will meet the schedule set forth by MDEQ-SRF Grants Department for FY 2023/24 Funding.

We appreciate the opportunity to provide our services and look forward to working with you on this exciting project. Should you have any questions or comments, please do not hesitate to contact me.

Respectfully submitted,
Machado | Patano, PLLC



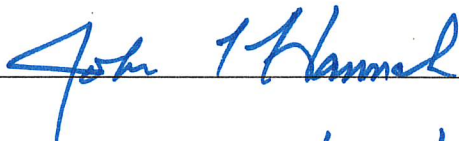
Gerrod Kilpatrick, P.E.

Attachments:

- Appendix A – General Terms and Conditions
- Appendix B – Map of Area
- Appendix C – Hourly Rate schedule
- Appendix D – SRF Fee Curve
- Appendix E – Allowable Cost Certification Form

The Terms and Conditions of this agreement are accepted this 16th day of February, 2023.

Signature



Printed or typed name

John T Hannah

Title

DIRECTOR

Date

02.16.2023



EXHIBIT A GENERAL TERMS AND CONDITIONS

1. **Relationship Between Machado | Patano, PLLC (hereafter, "MP") and Client.** Machado | Patano shall serve as the professional engineering consultant of West Jackson County Utility District, (hereafter, "Client") in those phases of the Project to which this Professional Services Agreement ("Agreement") applies. MP shall not be considered to be the employee or agent of the Client and shall always be considered an independent contractor of Client. The relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.
2. **Professional Services Agreement Documents.** The Agreement shall consist of these General Terms and Conditions and the Proposal executed by Client and MP, if any. In the event of a conflict between the Proposal and these General Terms and Conditions, the latter shall govern.
3. **Applicability.** These General Terms and Conditions shall apply to all work performed by MP for the benefit of Client on this and all future projects, unless the parties agree, in writing, to subsequent General Terms and Conditions. The execution of a written Proposal on future projects is not a condition precedent to the applicability of these General Terms and Conditions to such work.
4. **Responsibility of MP.** MP will **endeavor** to perform services under this Agreement in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. It is understood and agreed that no other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, including exhibits incorporated herein, if any, or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any agreement between the Client and any other party concerning the Project, MP shall not have control of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction; or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall MP be responsible for the acts or omissions of the Client, or for the failure of the Client, any contractor or subcontractor, or any other engineer, architect or consultant not under contract to MP to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project.

If the applicable Proposal directs it to do so, MP shall determine the amounts owing to the construction contractor and recommend in writing payments to the contractor in such amounts. By recommending any payment, MP will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made to check the quality or quantity of the contractor's work.

5. **Responsibilities of Client.** Client shall provide all criteria and full information as to its requirements for the Project, including budgetary limitations, insurance and bonding requirements, if any, and a written description of Project goals. Client shall arrange for MP to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project.

Client shall give prompt written notice to MP whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of MP's services, or any defect or nonconformance in the work of any construction contractor.

Client shall examine all documents presented by MP, obtain advice of an attorney or other consultant as Client deems appropriate for such examinations, and provide decisions pertaining thereto within a reasonable time so as not to delay the services of MP.

Client shall promptly pay invoices of MP for professional services rendered.

6. **Initial Decision Maker.** MP shall serve as the Initial Decision Maker on the Project only if agreed in writing by the Client and Contractor. The service of MP as Initial Decision Maker shall be in accordance with the Construction Industry Initial Decision Maker (IDM) Procedures currently in effect as of the date this Agreement is executed.
7. **Designation of Authorized Representatives.** Each party shall designate, in writing, one or more persons to act with authority in its behalf with respect to the Project. The persons designated shall review and respond promptly to all communications received from the party.

8. **Ownership of Documents.** Drawings, specifications, reports and any other documents prepared by MP in connection with any or all of the services furnished hereunder shall be the property of Client. MP shall have the right to retain copies of all documents and drawings for its files.
9. **Reuse of Documents.** All documents, including drawings and specifications furnished by MP pursuant to this Agreement, are intended for use on the Project only. They shall not be used by Client or others on extensions of the Project or on any other project. Any reuse, without written verification or adoption by MP, shall be at Client's sole risk, and Client shall indemnify and hold harmless MP from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting therefrom.
10. **Opinions of Cost.** Since MP has no control over the cost of labor, materials, equipment or services furnished by the contractor, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, MP cannot and does not guarantee that proposals, bids or actual construction costs will not vary from his opinions or estimates of construction costs. MP shall not be liable in any way to Client for any cost variances.
11. **Changes.** Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments; and MP and Client shall negotiate appropriate adjustments in fee and/or schedule acceptable to both parties to accommodate any changes.
12. **Delays.** If MP's services are delayed by the Client, or for other reasons beyond MP's control, for more than 120 days, the fee provided for in this Agreement shall be adjusted equitably.
13. **Subcontracts.** In its sole discretion, MP may elect to retain sub-consultants for the performance of portions of the services contemplated by this Agreement. MP shall have the authority to select such sub-consultants and shall not be required to obtain approval of Client as to the identity of such sub-consultants.
14. **Suspension of Services.** Should any amount owing MP remain past due and owing for more than 30 days, MP may, at its sole election, immediately stop work until such time as all amounts due and owing MP, including interest and attorney's fees are paid, and MP shall be held harmless by the Client for any damages accruing or alleged to have accrued from such work stoppage. Client may, at any time, by written order to MP, require MP to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, MP shall immediately comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the services covered by the order. Client, however, shall pay all costs associated with suspension including all costs necessary to maintain continuity and the staff required to resume the services upon expiration of the suspension of work order. MP will not be obligated to provide the same personnel employed prior to suspension when the services are resumed in the event the period of any suspension exceeds 30 days. Client will reimburse MP for the costs of such suspension and remobilization.
15. **Termination.** This Agreement may be terminated by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by MP either before or after the termination date shall be reimbursed by Client.
16. **Notices.** Any notice or designation required to be given by either party hereto shall be in writing and, unless receipt of such notice is expressly required by the terms hereof, it shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereinafter furnish to the other party by written notice as herein provided.
17. **Indemnification.** MP or its insurer shall indemnify and hold harmless Client from Client's loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage arising out of the sole negligent act, error or omission of MP to the fullest extent allowed by law.

Client shall indemnify and hold harmless MP from MP's loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error or omission of Client to the fullest extent allowed by law.

In the event of joint or concurrent negligence of MP and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties) which caused the personal injury or property damage to the fullest extent allowed by law.

Client shall not be liable to MP, and MP shall not be liable to the Client, for any special, incidental or consequential damages, including, but not limited to, loss of use and loss of profit, incurred by either party due to the fault of the other, regardless of the nature of this fault, or whether it was committed by the Client or MP or their employees, agents or subcontractors, by reason of services rendered under this Agreement to the fullest extent allowed by law.

18. **Dispute Resolution.** The parties shall endeavor to resolve claims, disputes, and other matters in controversy via mediation, which, unless the parties agree otherwise, shall be conducted in Gulfport, Mississippi, pursuant to the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association currently in effect as of the date this Agreement is executed.

~~Except as otherwise specifically provided herein, all claims, disputes, and other matters in controversy between MP and the Client arising out of or relating to this Agreement shall be decided by binding arbitration. If MP in good faith believes that any claim, dispute, or matter in controversy with MP also involves rights or liabilities of any third party, then, at MP's sole election, the Client agrees to resolve such issues in the same forum or proceeding, including arbitration, court, or administrative authority, which has jurisdiction over some or all claims, disputes, and matters in controversy involving the third party so as to promote economy and avoid inconsistent results. Mediation shall not be a condition precedent to arbitration.~~

~~MP and Client intend and agree that the foregoing dispute resolution provisions are not independent of nor severable from the remainder of the Agreement and that such provisions are supported by the consideration and mutuality of the Agreement as a whole. The locale for any arbitration or litigation involving the Client and MP shall be Gulfport, Mississippi, unless MP agrees to designate another locale to facilitate joinder of parties, to consolidate claims, or for any other reason. Any arbitration proceedings conducted pursuant to this Agreement shall be conducted and decided pursuant to the American Arbitration Association Construction Industry Arbitration Rules and Mediation Procedures in effect as of the date this Agreement is executed.~~

~~If MP and the Client litigate or arbitrate a monetary claim, not otherwise prohibited by this Agreement, the party found liable in such proceedings will pay the other party's reasonable and necessary attorneys' fees. If less than the full amount of such monetary claim is awarded, the party asserting such claim ("claimant") shall recover reasonable and necessary attorneys' fees (but no contingent fees) equal to the proportion of the amount awarded to the amount claimed, and the claimant shall pay the other party's reasonable and necessary attorneys' fees (but no contingent fees) equal to the proportion of the amount denied to the amount claimed.~~

19. **Legal Proceedings.** In the event MP's employees are at any time required by Client to provide testimony, answer interrogatories or otherwise provide information ("testimony") in preparation for or at a trial, hearing, proceeding or inquiry ("proceeding") arising out of the services that are the subject of this Agreement, where MP is not a party to such proceeding, Client will compensate MP for its services and reimburse MP for all related direct costs incurred in connection with providing such testimony. This provision shall be of no effect if the parties have agreed in a separate agreement or an amendment to this Agreement to terms which specifically supersede this provision, nor shall this provision apply in the event Client engages MP to provide expert testimony or litigation support, which services shall be the subject of a separate agreement or an amendment to this Agreement.
20. **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
21. **Insurance.** MP shall maintain workmen's compensation and unemployment compensation for its direct employees of a form and in an amount as required by state law. MP shall endeavor to maintain comprehensive general liability insurance, automotive liability, and professional liability insurance. Client recognizes that the insurance market is erratic and MP cannot guarantee to maintain the coverages identified above, except to the extent required by law.
22. **Information Provided by the Client.** MP shall indicate to the Client the information needed for rendering of services hereunder. The Client may elect to provide this information (including services by others) to MP. In this case, the Client recognizes that MP cannot assure the sufficiency of such information. Accordingly, MP shall not be liable for any claims for injury or loss arising from errors, omissions or inaccuracies in documents or other information provided by the Client or any other person or entity acting on behalf of Client. In addition, the Client agrees to compensate MP for any time spent or expenses incurred in defending such claim or in making revisions to his work as a direct or indirect result of information provided by the Client which is insufficient or inaccurate.
23. **Latent or Subsurface Conditions and Utilities.** Client recognizes that a comprehensive, site investigation and sampling and testing program implemented by trained and experienced personnel of MP or MP's subconsultants with appropriate equipment may fail to detect certain hidden conditions. Client also recognizes that actual environmental, geological and geotechnical conditions that MP properly inferred to exist between sampling points may differ significantly from those that actually exist.
- MP will locate utilities which will affect the project from information provided by the Client and utility companies and from MP's surveys. In that these utility locations are based, at least in part, on information from others, MP cannot and does not warrant their completeness and accuracy.
24. **Hazardous Materials.** When hazardous materials are known, assumed or suspected to exist at a project site, MP is required to take appropriate precautions to protect the health and safety of his personnel, to comply with the applicable laws and regulations and to follow procedures deemed prudent to minimize physical risks to employees and the public. Client hereby warrants that, if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site, he will inform MP in writing prior to initiation of services under this Agreement.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Client agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. MP agrees to notify Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. Client waives any claim against MP and agrees to indemnify, defend and hold MP harmless from any claim or liability for injury or loss arising from MP's encountering unanticipated hazardous materials or suspected hazardous materials. Client also agrees to compensate MP for any time spent and expenses incurred by MP in defense of any such claim.

25. **Risk Allocation.** ~~The Client recognizes that MP's fee includes an allowance for funding a variety of risks which affect MP by virtue of his agreeing to perform services on the Client's behalf. One of these risks stems from MP's potential for human error. In order for the Client to obtain the benefits of a fee which includes a lesser allowance for risk funding, the Client agrees to limit MP's liability to the Client and all construction contractors arising from MP's professional acts, errors or omissions, such that the total aggregate liability of MP to all those named shall not exceed \$50,000 or MP's total fee for the services rendered on this project, whichever is greater.~~
26. **Anticipated Change Orders.** Client recognizes and expects that a certain amount of imprecision and incompleteness is to be expected in construction contract documents; that contractors are expected to furnish and perform work, materials and equipment that may reasonably be inferred from the contract documents or from the prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for; and that a certain amount of change orders are to be expected. As long as MP provides services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions, client agrees not to make any claim against MP for cost of these change orders unless these costs become a significant part of the construction contract amount. In no case will Client make claim against MP for costs incurred if the change order work is a necessary part of the Project for which Client would have incurred cost if work had been included originally in the contract documents unless Client can demonstrate that such costs were higher through issuance of the change order than they would have been if originally included in the contract documents in which case any claim of Client against MP will be limited to the lesser of the cost increase (and not the entire cost of the change order) or the limit set forth in Paragraph 25.
27. **Payment.** MP shall submit monthly invoices to Client. Payment in full shall be due upon receipt of the invoice. If payments are delinquent after 30 days from the invoice date, Client agrees to pay interest on the unpaid balance at the legal rate. Payment for MP's services is not contingent on any factor except MP's ability to provide services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. Should MP be required to initiate collection efforts, whether through correspondence or formal dispute resolution proceedings, Client agrees that it shall be liable to MP for its reasonable attorney's fees expended in connection with such collection efforts.
28. **Force Majeure.** Neither Client nor MP shall be liable for any fault or delay caused by any contingency beyond their control, including, but not limited to, acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
29. **Compliance with Laws.** To the extent they apply to its employees or its services, MP shall comply with all applicable United States, state, territorial and commonwealth laws, including ordinances of any political subdivisions or agencies of the United States, any state, territory or commonwealth thereof.
30. **Separate Provisions.** If any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding.
31. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi.
32. **Amendment.** This Agreement shall not be subject to amendment unless another instrument is executed by duly authorized representatives of each of the parties.
33. **No Waiver.** No action or inaction on the part of any party shall constitute a waiver of any provision of this Agreement. The failure to enforce any provision of this Agreement shall not constitute a waiver, nor prohibit subsequent enforcement of such provision. A waiver shall be valid and binding only if in writing and signed by the party against whom the waiver is being asserted.
34. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and MP hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of this Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.

2023 HOURLY SERVICE RATE/REIMBURSEMENT SCHEDULE

<u>Description</u>	<u>Rate</u>
Principal	\$ 250.00
Sr. Professional Architect	\$ 195.00
Sr. Professional Engineer	\$ 195.00
Sr. Construction Engineer	\$ 195.00
Professional Architect	\$ 150.00
Professional Engineer	\$ 150.00
Sr. Project Manager	\$ 150.00
GPS/Robotic Survey Technician **	\$ 150.00
Project Engineer	\$ 125.00
Project Architect	\$ 125.00
Professional Land Surveyor	\$ 125.00
Resident Project Representative	\$ 110.00
CAD Designer	\$ 85.00
Clerical	\$ 70.00
CAD Drafter	\$ 70.00
Survey Rodman **	\$ 40.00
Survey Laborer **	\$ 25.00

*** Service item includes all survey equipment, materials, vehicles, and associated appurtenances to perform all required survey work. Travel time to project site shall be included in hourly billing.*

Aerial Survey Drone (Daily Min.)

\$3,000 / DAY



PROJECT REIMBURSABLE EXPENSES

Project Application Fees = Cost
 Mileage = Current Federal Rate
 Shipping = Cost

Reproduction (Offsite) = Cost
 Travel / Lodging = Cost
 Sub-Consultant Fees = Cost + 10%

SRF Sewer Facilities Construction Phase Services Fee - PH III

Input Actual Construction Cost	Calculated Fee Percentage	Calculated Fee Dollar Amount
\$7,500,000.00	7.8000%	\$585,000.00

Input Construction Cost

Above & Below Actual Construction Cost from the Table Below	Input Fee Percentange associated with Construction Cost from the Table Below
\$6,000,000.00	8.1000%
\$7,000,000.00	7.9000%

Construction Cost	Fee as a Percentage of Construction Cost	Construction Phase Services Fee Dollar Amount
\$10,000.00	23.0000%	\$2,300.00
\$100,000.00	23.0000%	\$23,000.00
\$200,000.00	19.5000%	\$39,000.00
\$300,000.00	17.5000%	\$52,500.00
\$400,000.00	16.0000%	\$64,000.00
\$500,000.00	14.8000%	\$74,000.00
\$600,000.00	14.0000%	\$84,000.00
\$700,000.00	13.3000%	\$93,100.00
\$800,000.00	12.7000%	\$101,600.00
\$900,000.00	12.1000%	\$108,900.00
\$1,000,000.00	11.7000%	\$117,000.00
\$1,250,000.00	10.8000%	\$135,000.00
\$1,500,000.00	10.1000%	\$151,500.00
\$1,750,000.00	9.7000%	\$169,750.00
\$2,000,000.00	9.5000%	\$190,000.00
\$2,500,000.00	9.1000%	\$227,500.00
\$3,000,000.00	8.9000%	\$267,000.00
\$3,500,000.00	8.8000%	\$308,000.00
\$4,000,000.00	8.6000%	\$344,000.00
\$5,000,000.00	8.3000%	\$415,000.00
\$6,000,000.00	8.1000%	\$486,000.00
\$7,000,000.00	7.9000%	\$553,000.00
\$8,000,000.00	7.8000%	\$624,000.00
\$9,000,000.00	7.7000%	\$693,000.00
\$10,000,000.00	7.6000%	\$760,000.00
\$20,000,000.00	6.6000%	\$1,320,000.00
\$40,000,000.00	6.6000%	\$2,640,000.00

SRF Sewer Facilities Construction Phase Services Fee - PH III

Input Actual Construction Cost	Calculated Fee Percentage	Calculated Fee Dollar Amount
\$7,500,000.00	7.8000%	\$585,000.00

Input Construction Cost

Above & Below Actual Construction Cost from the Table Below	Input Fee Percentange associated with Construction Cost from the Table Below
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\$400,000.00	16.0000%	\$64,000.00
\$500,000.00	14.8000%	\$74,000.00
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\$4,000,000.00	8.6000%	\$344,000.00
\$5,000,000.00	8.3000%	\$415,000.00
\$6,000,000.00	8.1000%	\$486,000.00
\$7,000,000.00	7.9000%	\$553,000.00
\$8,000,000.00	7.8000%	\$624,000.00
\$9,000,000.00	7.7000%	\$693,000.00
\$10,000,000.00	7.6000%	\$760,000.00
\$20,000,000.00	6.6000%	\$1,320,000.00
\$40,000,000.00	6.6000%	\$2,640,000.00

ALLOWABLE COST CERTIFICATION

Loan Applicant: West Jackson County Utility District

Loan Number: SRF-C280

We, Gerrod Kilpatrick, P.E. (Designated Representative) of Machado|Patano, PLLC (Professional Services Firm) (hereinafter "Professional") and John Hannah, P.E. (Authorized Representative) of West Jackson County Utility District (Loan Applicant) (hereinafter "Loan Applicant"), understand that this Allowable Cost Certification (hereinafter "Certification") is a material representation of fact upon which reliance is placed by the Mississippi Department of Environmental Quality (hereinafter "MDEQ") regarding state financial assistance under Section 49-17-81 through 89, Mississippi Code of 1972, as amended (Water Pollution Control Revolving Fund and Emergency Loan Fund Act) to construct the water pollution control project identified above.

We understand that we shall immediately provide notice to MDEQ if at any time either party learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

We certify to the following provisions regarding contracts for professional services between the Loan Applicant and Professional for this project as well as any related subcontracts into which the Professional may enter:

Labor costs, other direct costs, overhead, profit and all other costs are reasonable considering the nature and scope of work, the degree of risk, and the type of contract.

The overhead rate does not include public liaison services, bad debt or entertainment costs.

This contract for professional services contains only costs that are normally charged by the Professional on other similar non-Water Pollution Control Revolving Loan Fund (WPCRLF) projects, and such costs have not been increased for this WPCRLF project.

We understand that MDEQ will report violations and/or suspected violations to the appropriate state authorities in accordance with applicable state law and regulations as determined appropriate by MDEQ.

We understand that if MDEQ discovers that any of the allowable cost requirements were violated or that the Professional and/or Loan Applicant rendered an erroneous Certification, in addition to all other remedies available, the Executive Director, or his designee, may determine that the related costs are unallowable and may require repayment of all WPCRLF funds paid for such costs, in accordance with Rule 7.3.H.(6) of the WPCRLF Program Regulations. We also understand that violations of the state public purchasing laws may subject us to further penalties as described in Sections 31-7-55, 31-7-57 and/or 97-7-10, Mississippi Code of 1972, as amended.

The Professional and Loan Applicant certify under penalty of law that they have personally examined and are familiar with the information submitted herein, and, based on inquiry of those individuals immediately responsible for obtaining the information, they believe the submitted information is true, accurate and complete.



Professional (Signature)

Gerrod W. Kilpatrick, P.E.

Printed Name

1-13-2023

Date



Authorized Representative (Signature)

John Hannah, P.E.

Printed Name

02-16-2023

Date

January 13, 2023

West Jackson County Utility District
John Hannah, P.E.
7200 Mc Cann Road
Biloxi, MS 39532

VIA EMAIL: jhannah@wjcud.com

RE: Engineering Proposal for Sewer Facilities Plan – PH IV B –Construction Phase Services

Mr. Hannah:

Per your request, we are pleased to provide you with a proposal for professional services for the above referenced project. This proposal is for and construction phase services only for a new MDEQ-SRF funded sewer facilities plan "Wastewater Facilities Plan PH IV B". The design for this phase has previously been completed by Machado Patano. This work will be performed under the direct supervision of Gerrod W. Kilpatrick, P.E., MS License # 16559. We have prepared a detailed scope of work and fee proposal for your review. For a detailed scope of work, see below:

The loan recipient and its vendors acknowledge and agree that the MDEQ is not a party, in any way whatsoever, to the contract between the Loan Recipient and its vendor. The Loan Recipient and its vendors acknowledge and agree that the role of the Department is strictly that of a lender, that the vendors are not and are not intended to be considered a third party beneficiary under any agreement between the Department and the Loan Recipient. Additionally, the Loan Recipient and its vendors acknowledge and agree that any action taken by the Department in its role of administrator for the revolving loan programs, or in its separate and distinct role as regulator, shall not in any way change or alter its position as that lender.

The Department of Environmental Quality is not a party to any of the Loan Recipient's contracts and will not review, comment, approve, or discuss the merits of any contract claims presented by or to any party. Any Department reviews, approvals, observations, presence at meetings, written communications, verbal communications or other actions are not to be interpreted as addressing the merits of any claims, nor are they to be construed as interpreting the contract between the Loan Recipient and the vendor or any other parties.

MDEQ and its representatives may have access to and the right to audit, inspect, copy and examine books, financial records and other documents relating directly to the receipt and disbursement of WPCRLF funds.

SCOPE OF WORK

Task 1 – Bid & Construction Phase Services – PH IV B

M | P will perform Construction Phase Services for the duration of the construction period. Scope shall include:

- Provide Full Time Resident Project Representative (RPR) for the duration of the construction
- Review Technical submittals
- Review and provide response to all RFI's
- Provide Field Directives (as needed)
- Review Pay Applications
- Assist in Project Closeout
- Provide As-Built Record Drawings at Construction Completion
- Provide necessary documentation for SRF Reimbursement

I. DESIGN FEE PROPOSAL

Task 1 – Bid & Construction Phase Services (Phase IV B)

Per Attached SRF Fee Curve

***Fees for Task 1 will be determined from SRF Fee Curve (Appendix E). This will be adjusted to match the actual construction cost.*

II. ASSUMPTIONS

- WJCUD will provide necessary maps in ACAD/GIS Format.
- WJCUD will provide their standard details and specifications.
- WJCUD will provide a copy of all environmental approvals
- WJCUD will provide all land acquisition documents (easements, right of ways, surveys, etc.)
- WJCUD will provide a copy of the approved Facility Plan.

III. EXCLUSIONS(available at additional cost or at M | P Standard Hourly and Reimbursement Schedule)

- Permit & Application Fees
- Legal Services
- Land Acquisition Services (negotiating with landowners)

** Any additional services requested outside this scope will be billed based on our unit price schedule.

IV. SCHEDULE

M|P will meet the schedule set forth by MDEQ-SRF Grants Department for FY 2023/24 Funding.

We appreciate the opportunity to provide our services and look forward to working with you on this exciting project. Should you have any questions or comments, please do not hesitate to contact me.

Respectfully submitted,
Machado | Patano, PLLC



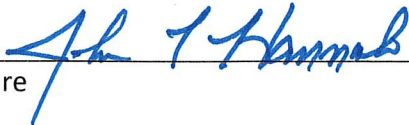
Gerrod Kilpatrick, P.E.

Attachments:

- Appendix A – General Terms and Conditions
- Appendix B – Hourly Rate schedule
- Appendix C – SRF Fee Curve
- Appendix D – Allowable Cost Certification Form

The Terms and Conditions of this agreement are accepted this 16th day of February, 2023.

Signature



Printed or typed name

John T Hannah

Title

Director

Date

02-16-2023



EXHIBIT A GENERAL TERMS AND CONDITIONS

1. **Relationship Between Machado | Patano, PLLC (hereafter, "MP") and Client.** Machado | Patano shall serve as the professional engineering consultant of West Jackson County Utility District, (hereafter, "Client") in those phases of the Project to which this Professional Services Agreement ("Agreement") applies. MP shall not be considered to be the employee or agent of the Client and shall always be considered an independent contractor of Client. The relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.
2. **Professional Services Agreement Documents.** The Agreement shall consist of these General Terms and Conditions and the Proposal executed by Client and MP, if any. In the event of a conflict between the Proposal and these General Terms and Conditions, the latter shall govern.
3. **Applicability.** These General Terms and Conditions shall apply to all work performed by MP for the benefit of Client on this and all future projects, unless the parties agree, in writing, to subsequent General Terms and Conditions. The execution of a written Proposal on future projects is not a condition precedent to the applicability of these General Terms and Conditions to such work.
4. **Responsibility of MP.** MP will **endeavor** to perform services under this Agreement in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. It is understood and agreed that no other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, including exhibits incorporated herein, if any, or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any agreement between the Client and any other party concerning the Project, MP shall not have control of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction; or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall MP be responsible for the acts or omissions of the Client, or for the failure of the Client, any contractor or subcontractor, or any other engineer, architect or consultant not under contract to MP to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project.

If the applicable Proposal directs it to do so, MP shall determine the amounts owing to the construction contractor and recommend in writing payments to the contractor in such amounts. By recommending any payment, MP will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made to check the quality or quantity of the contractor's work.

5. **Responsibilities of Client.** Client shall provide all criteria and full information as to its requirements for the Project, including budgetary limitations, insurance and bonding requirements, if any, and a written description of Project goals. Client shall arrange for MP to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project.

Client shall give prompt written notice to MP whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of MP's services, or any defect or nonconformance in the work of any construction contractor.

Client shall examine all documents presented by MP, obtain advice of an attorney or other consultant as Client deems appropriate for such examinations, and provide decisions pertaining thereto within a reasonable time so as not to delay the services of MP.

Client shall promptly pay invoices of MP for professional services rendered.

6. **Initial Decision Maker.** MP shall serve as the Initial Decision Maker on the Project only if agreed in writing by the Client and Contractor. The service of MP as Initial Decision Maker shall be in accordance with the Construction Industry Initial Decision Maker (IDM) Procedures currently in effect as of the date this Agreement is executed.
7. **Designation of Authorized Representatives.** Each party shall designate, in writing, one or more persons to act with authority in its behalf with respect to the Project. The persons designated shall review and respond promptly to all communications received from the party.

8. **Ownership of Documents.** Drawings, specifications, reports and any other documents prepared by MP in connection with any or all of the services furnished hereunder shall be the property of Client. MP shall have the right to retain copies of all documents and drawings for its files.
9. **Reuse of Documents.** All documents, including drawings and specifications furnished by MP pursuant to this Agreement, are intended for use on the Project only. They shall not be used by Client or others on extensions of the Project or on any other project. Any reuse, without written verification or adoption by MP, shall be at Client's sole risk, and Client shall indemnify and hold harmless MP from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting therefrom.
10. **Opinions of Cost.** Since MP has no control over the cost of labor, materials, equipment or services furnished by the contractor, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, MP cannot and does not guarantee that proposals, bids or actual construction costs will not vary from his opinions or estimates of construction costs. MP shall not be liable in any way to Client for any cost variances.
11. **Changes.** Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments; and MP and Client shall negotiate appropriate adjustments in fee and/or schedule acceptable to both parties to accommodate any changes.
12. **Delays.** If MP's services are delayed by the Client, or for other reasons beyond MP's control, for more than 120 days, the fee provided for in this Agreement shall be adjusted equitably.
13. **Subcontracts.** In its sole discretion, MP may elect to retain sub-consultants for the performance of portions of the services contemplated by this Agreement. MP shall have the authority to select such sub-consultants and shall not be required to obtain approval of Client as to the identity of such sub-consultants.
14. **Suspension of Services.** Should any amount owing MP remain past due and owing for more than 30 days, MP may, at its sole election, immediately stop work until such time as all amounts due and owing MP, including interest and attorney's fees are paid, and MP shall be held harmless by the Client for any damages accruing or alleged to have accrued from such work stoppage. Client may, at any time, by written order to MP, require MP to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, MP shall immediately comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the services covered by the order. Client, however, shall pay all costs associated with suspension including all costs necessary to maintain continuity and the staff required to resume the services upon expiration of the suspension of work order. MP will not be obligated to provide the same personnel employed prior to suspension when the services are resumed in the event the period of any suspension exceeds 30 days. Client will reimburse MP for the costs of such suspension and remobilization.
15. **Termination.** This Agreement may be terminated by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by MP either before or after the termination date shall be reimbursed by Client.
16. **Notices.** Any notice or designation required to be given by either party hereto shall be in writing and, unless receipt of such notice is expressly required by the terms hereof, it shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereinafter furnish to the other party by written notice as herein provided.
17. **Indemnification.** MP or its insurer shall indemnify and hold harmless Client from Client's loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage arising out of the sole negligent act, error or omission of MP to the fullest extent allowed by law.

Client shall indemnify and hold harmless MP from MP's loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error or omission of Client to the fullest extent allowed by law.

In the event of joint or concurrent negligence of MP and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties) which caused the personal injury or property damage to the fullest extent allowed by law.

Client shall not be liable to MP, and MP shall not be liable to the Client, for any special, incidental or consequential damages, including, but not limited to, loss of use and loss of profit, incurred by either party due to the fault of the other, regardless of the nature of this fault, or whether it was committed by the Client or MP or their employees, agents or subcontractors, by reason of services rendered under this Agreement to the fullest extent allowed by law.

18. **Dispute Resolution.** The parties shall endeavor to resolve claims, disputes, and other matters in controversy via mediation, which, unless the parties agree otherwise, shall be conducted in Gulfport, Mississippi, pursuant to the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association currently in effect as of the date this Agreement is executed.

~~Except as otherwise specifically provided herein, all claims, disputes, and other matters in controversy between MP and the Client arising out of or relating to this Agreement shall be decided by binding arbitration. If MP in good faith believes that any claim, dispute, or matter in controversy with MP also involves rights or liabilities of any third party, then, at MP's sole election, the Client agrees to resolve such issues in the same forum or proceeding, including arbitration, court, or administrative authority, which has jurisdiction over some or all claims, disputes, and matters in controversy involving the third party so as to promote economy and avoid inconsistent results. Mediation shall not be a condition precedent to arbitration.~~

~~MP and Client intend and agree that the foregoing dispute resolution provisions are not independent of nor severable from the remainder of the Agreement and that such provisions are supported by the consideration and mutuality of the Agreement as a whole. The locale for any arbitration or litigation involving the Client and MP shall be Gulfport, Mississippi, unless MP agrees to designate another locale to facilitate joinder of parties, to consolidate claims, or for any other reason. Any arbitration proceedings conducted pursuant to this Agreement shall be conducted and decided pursuant to the American Arbitration Association Construction Industry Arbitration Rules and Mediation Procedures in effect as of the date this Agreement is executed.~~

~~If MP and the Client litigate or arbitrate a monetary claim, not otherwise prohibited by this Agreement, the party found liable in such proceedings will pay the other party's reasonable and necessary attorneys' fees. If less than the full amount of such monetary claim is awarded, the party asserting such claim ("claimant") shall recover reasonable and necessary attorneys' fees (but no contingent fees) equal to the proportion of the amount awarded to the amount claimed, and the claimant shall pay the other party's reasonable and necessary attorneys' fees (but no contingent fees) equal to the proportion of the amount denied to the amount claimed.~~

19. **Legal Proceedings.** In the event MP's employees are at any time required by Client to provide testimony, answer interrogatories or otherwise provide information ("testimony") in preparation for or at a trial, hearing, proceeding or inquiry ("proceeding") arising out of the services that are the subject of this Agreement, where MP is not a party to such proceeding, Client will compensate MP for its services and reimburse MP for all related direct costs incurred in connection with providing such testimony. This provision shall be of no effect if the parties have agreed in a separate agreement or an amendment to this Agreement to terms which specifically supersede this provision, nor shall this provision apply in the event Client engages MP to provide expert testimony or litigation support, which services shall be the subject of a separate agreement or an amendment to this Agreement.
20. **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
21. **Insurance.** MP shall maintain workmen's compensation and unemployment compensation for its direct employees of a form and in an amount as required by state law. MP shall endeavor to maintain comprehensive general liability insurance, automotive liability, and professional liability insurance. Client recognizes that the insurance market is erratic and MP cannot guarantee to maintain the coverages identified above, except to the extent required by law.
22. **Information Provided by the Client.** MP shall indicate to the Client the information needed for rendering of services hereunder. The Client may elect to provide this information (including services by others) to MP. In this case, the Client recognizes that MP cannot assure the sufficiency of such information. Accordingly, MP shall not be liable for any claims for injury or loss arising from errors, omissions or inaccuracies in documents or other information provided by the Client or any other person or entity acting on behalf of Client. In addition, the Client agrees to compensate MP for any time spent or expenses incurred in defending such claim or in making revisions to his work as a direct or indirect result of information provided by the Client which is insufficient or inaccurate.
23. **Latent or Subsurface Conditions and Utilities.** Client recognizes that a comprehensive, site investigation and sampling and testing program implemented by trained and experienced personnel of MP or MP's subconsultants with appropriate equipment may fail to detect certain hidden conditions. Client also recognizes that actual environmental, geological and geotechnical conditions that MP properly inferred to exist between sampling points may differ significantly from those that actually exist.
- MP will locate utilities which will affect the project from information provided by the Client and utility companies and from MP's surveys. In that these utility locations are based, at least in part, on information from others, MP cannot and does not warrant their completeness and accuracy.
24. **Hazardous Materials.** When hazardous materials are known, assumed or suspected to exist at a project site, MP is required to take appropriate precautions to protect the health and safety of his personnel, to comply with the applicable laws and regulations and to follow procedures deemed prudent to minimize physical risks to employees and the public. Client hereby warrants that, if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site, he will inform MP in writing prior to initiation of services under this Agreement.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Client agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. MP agrees to notify Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. Client waives any claim against MP and agrees to indemnify, defend and hold MP harmless from any claim or liability for injury or loss arising from MP's encountering unanticipated hazardous materials or suspected hazardous materials. Client also agrees to compensate MP for any time spent and expenses incurred by MP in defense of any such claim.

25. **Risk Allocation.** ~~The Client recognizes that MP's fee includes an allowance for funding a variety of risks which affect MP by virtue of his agreeing to perform services on the Client's behalf. One of these risks stems from MP's potential for human error. In order for the Client to obtain the benefits of a fee which includes a lesser allowance for risk funding, the Client agrees to limit MP's liability to the Client and all construction contractors arising from MP's professional acts, errors or omissions, such that the total aggregate liability of MP to all those named shall not exceed \$50,000 or MP's total fee for the services rendered on this project, whichever is greater.~~
26. **Anticipated Change Orders.** Client recognizes and expects that a certain amount of imprecision and incompleteness is to be expected in construction contract documents; that contractors are expected to furnish and perform work, materials and equipment that may reasonably be inferred from the contract documents or from the prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for; and that a certain amount of change orders are to be expected. As long as MP provides services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions, client agrees not to make any claim against MP for cost of these change orders unless these costs become a significant part of the construction contract amount. In no case will Client make claim against MP for costs incurred if the change order work is a necessary part of the Project for which Client would have incurred cost if work had been included originally in the contract documents unless Client can demonstrate that such costs were higher through issuance of the change order than they would have been if originally included in the contract documents in which case any claim of Client against MP will be limited to the lesser of the cost increase (and not the entire cost of the change order) or the limit set forth in Paragraph 25.
27. **Payment.** MP shall submit monthly invoices to Client. Payment in full shall be due upon receipt of the invoice. If payments are delinquent after 30 days from the invoice date, Client agrees to pay interest on the unpaid balance at the legal rate. Payment for MP's services is not contingent on any factor except MP's ability to provide services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. Should MP be required to initiate collection efforts, whether through correspondence or formal dispute resolution proceedings, Client agrees that it shall be liable to MP for its reasonable attorney's fees expended in connection with such collection efforts.
28. **Force Majeure.** Neither Client nor MP shall be liable for any fault or delay caused by any contingency beyond their control, including, but not limited to, acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
29. **Compliance with Laws.** To the extent they apply to its employees or its services, MP shall comply with all applicable United States, state, territorial and commonwealth laws, including ordinances of any political subdivisions or agencies of the United States, any state, territory or commonwealth thereof.
30. **Separate Provisions.** If any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding.
31. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi.
32. **Amendment.** This Agreement shall not be subject to amendment unless another instrument is executed by duly authorized representatives of each of the parties.
33. **No Waiver.** No action or inaction on the part of any party shall constitute a waiver of any provision of this Agreement. The failure to enforce any provision of this Agreement shall not constitute a waiver, nor prohibit subsequent enforcement of such provision. A waiver shall be valid and binding only if in writing and signed by the party against whom the waiver is being asserted.
34. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and MP hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of this Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.

2023 HOURLY SERVICE RATE/REIMBURSEMENT SCHEDULE

<u>Description</u>	<u>Rate</u>
Principal	\$ 250.00
Sr. Professional Architect	\$ 195.00
Sr. Professional Engineer	\$ 195.00
Sr. Construction Engineer	\$ 195.00
Professional Architect	\$ 150.00
Professional Engineer	\$ 150.00
Sr. Project Manager	\$ 150.00
GPS/Robotic Survey Technician **	\$ 150.00
Project Engineer	\$ 125.00
Project Architect	\$ 125.00
Professional Land Surveyor	\$ 125.00
Resident Project Representative	\$ 110.00
CAD Designer	\$ 85.00
Clerical	\$ 70.00
CAD Drafter	\$ 70.00
Survey Rodman **	\$ 40.00
Survey Laborer **	\$ 25.00

*** Service item includes all survey equipment, materials, vehicles, and associated appurtenances to perform all required survey work. Travel time to project site shall be included in hourly billing.*

Aerial Survey Drone (Daily Min.)

\$3,000 / DAY



PROJECT REIMBURSABLE EXPENSES

Project Application Fees = Cost
 Mileage = Current Federal Rate
 Shipping = Cost

Reproduction (Offsite) = Cost
 Travel / Lodging = Cost
 Sub-Consultant Fees = Cost + 10%

SRF Sewer Facilities Construction Phase Services Fee - PH 4B

Input Actual Construction Cost	Calculated Fee Percentage	Calculated Fee Dollar Amount
\$4,500,000.00	8.4000%	\$378,000.00

Input Construction Cost**Above & Below Actual****Input Fee Percentage****Construction Cost from
the Table Below****associated with Construction
Cost from the Table Below**

\$6,000,000.00	8.1000%
\$7,000,000.00	7.9000%

Construction Cost	Fee as a Percentage of Construction Cost	Construction Phase Services Fee Dollar Amount
\$10,000.00	23.0000%	\$2,300.00
\$100,000.00	23.0000%	\$23,000.00
\$200,000.00	19.5000%	\$39,000.00
\$300,000.00	17.5000%	\$52,500.00
\$400,000.00	16.0000%	\$64,000.00
\$500,000.00	14.8000%	\$74,000.00
\$600,000.00	14.0000%	\$84,000.00
\$700,000.00	13.3000%	\$93,100.00
\$800,000.00	12.7000%	\$101,600.00
\$900,000.00	12.1000%	\$108,900.00
\$1,000,000.00	11.7000%	\$117,000.00
\$1,250,000.00	10.8000%	\$135,000.00
\$1,500,000.00	10.1000%	\$151,500.00
\$1,750,000.00	9.7000%	\$169,750.00
\$2,000,000.00	9.5000%	\$190,000.00
\$2,500,000.00	9.1000%	\$227,500.00
\$3,000,000.00	8.9000%	\$267,000.00
\$3,500,000.00	8.8000%	\$308,000.00
\$4,000,000.00	8.6000%	\$344,000.00
\$5,000,000.00	8.3000%	\$415,000.00
\$6,000,000.00	8.1000%	\$486,000.00
\$7,000,000.00	7.9000%	\$553,000.00
\$8,000,000.00	7.8000%	\$624,000.00
\$9,000,000.00	7.7000%	\$693,000.00
\$10,000,000.00	7.6000%	\$760,000.00
\$20,000,000.00	6.6000%	\$1,320,000.00
\$40,000,000.00	6.6000%	\$2,640,000.00

ALLOWABLE COST CERTIFICATION

Loan Applicant: West Jackson County Utility District

Loan Number: SRF-C280

We, Gerrod Kilpatrick, P.E. (Designated Representative) of Machado|Patano, PLLC (Professional Services Firm) (hereinafter "Professional") and John Hannah, P.E. (Authorized Representative) of West Jackson County Utility District (Loan Applicant) (hereinafter "Loan Applicant"), understand that this Allowable Cost Certification (hereinafter "Certification") is a material representation of fact upon which reliance is placed by the Mississippi Department of Environmental Quality (hereinafter "MDEQ") regarding state financial assistance under Section 49-17-81 through 89, Mississippi Code of 1972, as amended (Water Pollution Control Revolving Fund and Emergency Loan Fund Act) to construct the water pollution control project identified above.

We understand that we shall immediately provide notice to MDEQ if at any time either party learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

We certify to the following provisions regarding contracts for professional services between the Loan Applicant and Professional for this project as well as any related subcontracts into which the Professional may enter:

Labor costs, other direct costs, overhead, profit and all other costs are reasonable considering the nature and scope of work, the degree of risk, and the type of contract.

The overhead rate does not include public liaison services, bad debt or entertainment costs.

This contract for professional services contains only costs that are normally charged by the Professional on other similar non-Water Pollution Control Revolving Loan Fund (WPCRLF) projects, and such costs have not been increased for this WPCRLF project.

We understand that MDEQ will report violations and/or suspected violations to the appropriate state authorities in accordance with applicable state law and regulations as determined appropriate by MDEQ.

We understand that if MDEQ discovers that any of the allowable cost requirements were violated or that the Professional and/or Loan Applicant rendered an erroneous Certification, in addition to all other remedies available, the Executive Director, or his designee, may determine that the related costs are unallowable and may require repayment of all WPCRLF funds paid for such costs, in accordance with Rule 7.3.H.(6) of the WPCRLF Program Regulations. We also understand that violations of the state public purchasing laws may subject us to further penalties as described in Sections 31-7-55, 31-7-57 and/or 97-7-10, Mississippi Code of 1972, as amended.

The Professional and Loan Applicant certify under penalty of law that they have personally examined and are familiar with the information submitted herein, and, based on inquiry of those individuals immediately responsible for obtaining the information, they believe the submitted information is true, accurate and complete.



Professional (Signature)

Gerrod W. Kilpatrick, P.E.

Printed Name

1-13-2023

Date



Authorized Representative (Signature)

John Hannah, P.E.

Printed Name

02-16-2023

Date

January 5, 2023

West Jackson County Utility District
John Hannah, P.E.
7200 Mc Cann Road
Biloxi, MS 39532

VIA EMAIL: jhannah@wjcud.com

RE: Engineering Proposal for Sewer Facilities Plan – PH V – Construction Documents and Construction Phase Services

Mr. Hannah:

Per your request, we are pleased to provide you with a proposal for professional services for the above referenced project. This proposal is for design, and construction phase services for a new MDEQ-SRF funded sewer facilities plan "Wastewater Facilities Plan PH V". This work will be performed under the direct supervision of Gerrod W. Kilpatrick, P.E., MS License # 16559. We have prepared a detailed scope of work and fee proposal for your review. For a detailed scope of work, see below:

The loan recipient and its vendors acknowledge and agree that the MDEQ is not a party, in any way whatsoever, to the contract between the Loan Recipient and its vendor. The Loan Recipient and its vendors acknowledge and agree that the role of the Department is strictly that of a lender, that the vendors are not and are not intended to be considered a third party beneficiary under any agreement between the Department and the Loan Recipient. Additionally, the Loan Recipient and its vendors acknowledge and agree that any action taken by the Department in its role of administrator for the revolving loan programs, or in its separate and distinct role as regulator, shall not in any way change or alter its position as that lender.

The Department of Environmental Quality is not a party to any of the Loan Recipient's contracts and will not review, comment, approve, or discuss the merits of any contract claims presented by or to any party. Any Department reviews, approvals, observations, presence at meetings, written communications, verbal communications or other actions are not to be interpreted as addressing the merits of any claims, nor are they to be construed as interpreting the contract between the Loan Recipient and the vendor or any other parties.

MDEQ and its representatives may have access to and the right to audit, inspect, copy and examine books, financial records and other documents relating directly to the receipt and disbursement of WPCRLF funds.

SCOPE OF WORK

Task 1 – Design Phase Services

M|P will provide the necessary design drawings and specifications to implement the new sewer infrastructure as specified in the “Facilities Plan” for the area depicted as PH V.

Scope shall include:

- Sanitary sewer design, which will include gravity and or force main design.
- Sanitary sewer lift station design
- Grading and drainage
- Plan and Profiles sheets of proposed design
- Erosion control
- Overall Utility Plan
- Lift Station Electrical and controls plan
- Necessary topographic survey information will be obtained
- Obtain necessary MDEQ Sanitary Sewer Permits
- Construction Details
- Technical Specifications
- Provide necessary documentation for SRF Reimbursement

Task 2 – Bid & Construction Phase Services – PH V

M|P will perform Construction Phase Services for the duration of the construction period. Scope shall include:

- Provide Full Time Resident Project Representative (RPR) for the duration of the construction
- Review Technical submittals
- Review and provide response to all RFI's
- Provide Field Directives (as needed)
- Review Pay Applications
- Assist in Project Closeout
- Provide As-Built Record Drawings at Construction Completion
- Provide necessary documentation for SRF Reimbursement

Task 3 – Special Services – PH V (As Required)

M|P will perform the following Special Services. Fees will be determined once a defined scope of work is determined.

1. Property acquisition surveys (M|P will perform)
2. Wetland Delineation Services (thru a sub-consultant)

3. Endangered Species Surveys (thru a sub-consultant)
4. Archeological Studies (thru a sub-consultant)
5. USCAE Wetland Permitting, if required (thru a sub-consultant)
6. Geotechnical Investigation, if required (thru a sub-consultant)
7. Land Appraisal Services (thru a sub-consultant)

I. DESIGN FEE PROPOSAL

Task 1 – Design Phase Services (Phase V)	Per Attached SRF Fee Curve
Task 2 – Bid & Construction Phase Services (Phase V)	Per Attached SRF Fee Curve
Task 3 – Special Services	Cost will be provided per task

***Fees for Task 1 & Task 2 will be determined from SRF Fee Curve (Appendix E). This will be adjusted to match the actual construction cost.*

II. ASSUMPTIONS

- WJCUD will provide necessary maps in ACAD/GIS Format.
- WJCUD will provide their standard details and specifications.
- WJCUD will provide a copy of all environmental approvals
- WJCUD will provide all land acquisition documents (easements, right of ways, surveys, etc.)
- WJCUD will provide a copy of the approved Facility Plan.

III. EXCLUSIONS(available at additional cost or at M|P Standard Hourly and Reimbursement Schedule)

- Permit & Application Fees
- Legal Services
- Land Acquisition Services (negotiating with landowners)

*** Any additional services requested outside this scope will be billed based on our unit price schedule.*

IV. SCHEDULE

M|P will meet the schedule set forth by MDEQ-SRF Grants Department for FY 2023/24 Funding.

We appreciate the opportunity to provide our services and look forward to working with you on this exciting project. Should you have any questions or comments, please do not hesitate to contact me.

Respectfully submitted,
Machado | Patano, PLLC



Gerrod Kilpatrick, P.E.

Attachments:

- Appendix A – General Terms and Conditions
- Appendix B – Map of Area
- Appendix C – Hourly Rate schedule
- Appendix D – SRF Fee Curve
- Appendix E – Allowable Cost Certification Form

The Terms and Conditions of this agreement are accepted this 16th day of February, 2023.

Signature



Printed or typed name

John T Hannah

Title

Director

Date

2-16-2023



EXHIBIT A GENERAL TERMS AND CONDITIONS

1. **Relationship Between Machado | Patano, PLLC (hereafter, "MP") and Client.** Machado | Patano shall serve as the professional engineering consultant of West Jackson County Utility District (hereafter, "Client") in those phases of the Project to which this Professional Services Agreement ("Agreement") applies. MP shall not be considered to be the employee or agent of the Client and shall always be considered an independent contractor of Client. The relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.
2. **Professional Services Agreement Documents.** The Agreement shall consist of these General Terms and Conditions and the Proposal executed by Client and MP, if any. In the event of a conflict between the Proposal and these General Terms and Conditions, the latter shall govern.
3. **Applicability.** These General Terms and Conditions shall apply to all work performed by MP for the benefit of Client on this and all future projects, unless the parties agree, in writing, to subsequent General Terms and Conditions. The execution of a written Proposal on future projects is not a condition precedent to the applicability of these General Terms and Conditions to such work.
4. **Responsibility of MP.** MP will **endeavor** to perform services under this Agreement in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. It is understood and agreed that no other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, including exhibits incorporated herein, if any, or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any agreement between the Client and any other party concerning the Project, MP shall not have control of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction; or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall MP be responsible for the acts or omissions of the Client, or for the failure of the Client, any contractor or subcontractor, or any other engineer, architect or consultant not under contract to MP to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project.

If the applicable Proposal directs it to do so, MP shall determine the amounts owing to the construction contractor and recommend in writing payments to the contractor in such amounts. By recommending any payment, MP will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made to check the quality or quantity of the contractor's work.

5. **Responsibilities of Client.** Client shall provide all criteria and full information as to its requirements for the Project, including budgetary limitations, insurance and bonding requirements, if any, and a written description of Project goals. Client shall arrange for MP to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project.

Client shall give prompt written notice to MP whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of MP's services, or any defect or nonconformance in the work of any construction contractor.

Client shall examine all documents presented by MP, obtain advice of an attorney or other consultant as Client deems appropriate for such examinations, and provide decisions pertaining thereto within a reasonable time so as not to delay the services of MP.

Client shall promptly pay invoices of MP for professional services rendered.

6. **Initial Decision Maker.** MP shall serve as the Initial Decision Maker on the Project only if agreed in writing by the Client and Contractor. The service of MP as Initial Decision Maker shall be in accordance with the Construction Industry Initial Decision Maker (IDM) Procedures currently in effect as of the date this Agreement is executed.
7. **Designation of Authorized Representatives.** Each party shall designate, in writing, one or more persons to act with authority in its behalf with respect to the Project. The persons designated shall review and respond promptly to all communications received from the party.

8. **Ownership of Documents.** Drawings, specifications, reports and any other documents prepared by MP in connection with any or all of the services furnished hereunder shall be the property of Client. MP shall have the right to retain copies of all documents and drawings for its files.
9. **Reuse of Documents.** All documents, including drawings and specifications furnished by MP pursuant to this Agreement, are intended for use on the Project only. They shall not be used by Client or others on extensions of the Project or on any other project. Any reuse, without written verification or adoption by MP, shall be at Client's sole risk, and Client shall indemnify and hold harmless MP from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting therefrom.
10. **Opinions of Cost.** Since MP has no control over the cost of labor, materials, equipment or services furnished by the contractor, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, MP cannot and does not guarantee that proposals, bids or actual construction costs will not vary from his opinions or estimates of construction costs. MP shall not be liable in any way to Client for any cost variances.
11. **Changes.** Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments; and MP and Client shall negotiate appropriate adjustments in fee and/or schedule acceptable to both parties to accommodate any changes.
12. **Delays.** If MP's services are delayed by the Client, or for other reasons beyond MP's control, for more than 120 days, the fee provided for in this Agreement shall be adjusted equitably.
13. **Subcontracts.** In its sole discretion, MP may elect to retain sub-consultants for the performance of portions of the services contemplated by this Agreement. MP shall have the authority to select such sub-consultants and shall not be required to obtain approval of Client as to the identity of such sub-consultants.
14. **Suspension of Services.** Should any amount owing MP remain past due and owing for more than 30 days, MP may, at its sole election, immediately stop work until such time as all amounts due and owing MP, including interest and attorney's fees are paid, and MP shall be held harmless by the Client for any damages accruing or alleged to have accrued from such work stoppage. Client may, at any time, by written order to MP, require MP to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, MP shall immediately comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the services covered by the order. Client, however, shall pay all costs associated with suspension including all costs necessary to maintain continuity and the staff required to resume the services upon expiration of the suspension of work order. MP will not be obligated to provide the same personnel employed prior to suspension when the services are resumed in the event the period of any suspension exceeds 30 days. Client will reimburse MP for the costs of such suspension and remobilization.
15. **Termination.** This Agreement may be terminated by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by MP either before or after the termination date shall be reimbursed by Client.
16. **Notices.** Any notice or designation required to be given by either party hereto shall be in writing and, unless receipt of such notice is expressly required by the terms hereof, it shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereinafter furnish to the other party by written notice as herein provided.
17. **Indemnification.** MP or its insurer shall indemnify and hold harmless Client from Client's loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage arising out of the sole negligent act, error or omission of MP to the fullest extent allowed by law.

Client shall indemnify and hold harmless MP from MP's loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error or omission of Client to the fullest extent allowed by law.

In the event of joint or concurrent negligence of MP and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties) which caused the personal injury or property damage to the fullest extent allowed by law.

Client shall not be liable to MP, and MP shall not be liable to the Client, for any special, incidental or consequential damages, including, but not limited to, loss of use and loss of profit, incurred by either party due to the fault of the other, regardless of the nature of this fault, or whether it was committed by the Client or MP or their employees, agents or subcontractors, by reason of services rendered under this Agreement to the fullest extent allowed by law.

18. **Dispute Resolution.** The parties shall endeavor to resolve claims, disputes, and other matters in controversy via mediation, which, unless the parties agree otherwise, shall be conducted in Gulfport, Mississippi, pursuant to the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association currently in effect as of the date this Agreement is executed.

~~Except as otherwise specifically provided herein, all claims, disputes, and other matters in controversy between MP and the Client arising out of or relating to this Agreement shall be decided by binding arbitration. If MP in good faith believes that any claim, dispute, or matter in controversy with MP also involves rights or liabilities of any third party, then, at MP's sole election, the Client agrees to resolve such issues in the same forum or proceeding, including arbitration, court, or administrative authority, which has jurisdiction over some or all claims, disputes, and matters in controversy involving the third party so as to promote economy and avoid inconsistent results. Mediation shall not be a condition precedent to arbitration.~~

MP and Client intend and agree that the foregoing dispute resolution provisions are not independent of nor severable from the remainder of the Agreement and that such provisions are supported by the consideration and mutuality of the Agreement as a whole. ~~The locale for any arbitration or litigation involving the Client and MP shall be Gulfport, Mississippi, unless MP agrees to designate another locale to facilitate joinder of parties, to consolidate claims, or for any other reason. Any arbitration proceedings conducted pursuant to this Agreement shall be conducted and decided pursuant to the American Arbitration Association Construction Industry Arbitration Rules and Mediation Procedures in effect as of the date this Agreement is executed.~~

~~If MP and the Client litigate or arbitrate a monetary claim, not otherwise prohibited by this Agreement, the party found liable in such proceedings will pay the other party's reasonable and necessary attorneys' fees. If less than the full amount of such monetary claim is awarded, the party asserting such claim ("claimant") shall recover reasonable and necessary attorneys' fees (but no contingent fees) equal to the proportion of the amount awarded to the amount claimed, and the claimant shall pay the other party's reasonable and necessary attorneys' fees (but no contingent fees) equal to the proportion of the amount denied to the amount claimed.~~

19. **Legal Proceedings.** In the event MP's employees are at any time required by Client to provide testimony, answer interrogatories or otherwise provide information ("testimony") in preparation for or at a trial, hearing, proceeding or inquiry ("proceeding") arising out of the services that are the subject of this Agreement, where MP is not a party to such proceeding, Client will compensate MP for its services and reimburse MP for all related direct costs incurred in connection with providing such testimony. This provision shall be of no effect if the parties have agreed in a separate agreement or an amendment to this Agreement to terms which specifically supersede this provision, nor shall this provision apply in the event Client engages MP to provide expert testimony or litigation support, which services shall be the subject of a separate agreement or an amendment to this Agreement.
20. **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
21. **Insurance.** MP shall maintain workmen's compensation and unemployment compensation for its direct employees of a form and in an amount as required by state law. MP shall endeavor to maintain comprehensive general liability insurance, automotive liability, and professional liability insurance. Client recognizes that the insurance market is erratic and MP cannot guarantee to maintain the coverages identified above, except to the extent required by law.
22. **Information Provided by the Client.** MP shall indicate to the Client the information needed for rendering of services hereunder. The Client may elect to provide this information (including services by others) to MP. In this case, the Client recognizes that MP cannot assure the sufficiency of such information. Accordingly, MP shall not be liable for any claims for injury or loss arising from errors, omissions or inaccuracies in documents or other information provided by the Client or any other person or entity acting on behalf of Client. In addition, the Client agrees to compensate MP for any time spent or expenses incurred in defending such claim or in making revisions to his work as a direct or indirect result of information provided by the Client which is insufficient or inaccurate.
23. **Latent or Subsurface Conditions and Utilities.** Client recognizes that a comprehensive, site investigation and sampling and testing program implemented by trained and experienced personnel of MP or MP's subconsultants with appropriate equipment may fail to detect certain hidden conditions. Client also recognizes that actual environmental, geological and geotechnical conditions that MP properly inferred to exist between sampling points may differ significantly from those that actually exist.
- MP will locate utilities which will affect the project from information provided by the Client and utility companies and from MP's surveys. In that these utility locations are based, at least in part, on information from others, MP cannot and does not warrant their completeness and accuracy.
24. **Hazardous Materials.** When hazardous materials are known, assumed or suspected to exist at a project site, MP is required to take appropriate precautions to protect the health and safety of his personnel, to comply with the applicable laws and regulations and to follow procedures deemed prudent to minimize physical risks to employees and the public. Client hereby warrants that, if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site, he will inform MP in writing prior to initiation of services under this Agreement.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Client agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. MP agrees to notify Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. Client waives any claim against MP and agrees to indemnify, defend and hold MP harmless from any claim or liability for injury or loss arising from MP's encountering unanticipated hazardous materials or suspected hazardous materials. Client also agrees to compensate MP for any time spent and expenses incurred by MP in defense of any such claim.

25. **Risk Allocation.** ~~The Client recognizes that MP's fee includes an allowance for funding a variety of risks which affect MP by virtue of his agreeing to perform services on the Client's behalf. One of these risks stems from MP's potential for human error. In order for the Client to obtain the benefits of a fee which includes a lesser allowance for risk funding, the Client agrees to limit MP's liability to the Client and all construction contractors arising from MP's professional acts, errors or omissions, such that the total aggregate liability of MP to all those named shall not exceed \$50,000 or MP's total fee for the services rendered on this project, whichever is greater.~~
26. **Anticipated Change Orders.** Client recognizes and expects that a certain amount of imprecision and incompleteness is to be expected in construction contract documents; that contractors are expected to furnish and perform work, materials and equipment that may reasonably be inferred from the contract documents or from the prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for; and that a certain amount of change orders are to be expected. As long as MP provides services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions, client agrees not to make any claim against MP for cost of these change orders unless these costs become a significant part of the construction contract amount. In no case will Client make claim against MP for costs incurred if the change order work is a necessary part of the Project for which Client would have incurred cost if work had been included originally in the contract documents unless Client can demonstrate that such costs were higher through issuance of the change order than they would have been if originally included in the contract documents in which case any claim of Client against MP will be limited to the lesser of the cost increase (and not the entire cost of the change order) or the limit set forth in Paragraph 25.
27. **Payment.** MP shall submit monthly invoices to Client. Payment in full shall be due upon receipt of the invoice. If payments are delinquent after 30 days from the invoice date, Client agrees to pay interest on the unpaid balance at the legal rate. Payment for MP's services is not contingent on any factor except MP's ability to provide services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. Should MP be required to initiate collection efforts, whether through correspondence or formal dispute resolution proceedings, Client agrees that it shall be liable to MP for its reasonable attorney's fees expended in connection with such collection efforts.
28. **Force Majeure.** Neither Client nor MP shall be liable for any fault or delay caused by any contingency beyond their control, including, but not limited to, acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
29. **Compliance with Laws.** To the extent they apply to its employees or its services, MP shall comply with all applicable United States, state, territorial and commonwealth laws, including ordinances of any political subdivisions or agencies of the United States, any state, territory or commonwealth thereof.
30. **Separate Provisions.** If any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding.
31. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi.
32. **Amendment.** This Agreement shall not be subject to amendment unless another instrument is executed by duly authorized representatives of each of the parties.
33. **No Waiver.** No action or inaction on the part of any party shall constitute a waiver of any provision of this Agreement. The failure to enforce any provision of this Agreement shall not constitute a waiver, nor prohibit subsequent enforcement of such provision. A waiver shall be valid and binding only if in writing and signed by the party against whom the waiver is being asserted.
34. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and MP hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of this Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.

2023 HOURLY SERVICE RATE/REIMBURSEMENT SCHEDULE

<u>Description</u>	<u>Rate</u>
Principal	\$ 250.00
Sr. Professional Architect	\$ 195.00
Sr. Professional Engineer	\$ 195.00
Sr. Construction Engineer	\$ 195.00
Professional Architect	\$ 150.00
Professional Engineer	\$ 150.00
Sr. Project Manager	\$ 150.00
GPS/Robotic Survey Technician **	\$ 150.00
Project Engineer	\$ 125.00
Project Architect	\$ 125.00
Professional Land Surveyor	\$ 125.00
Resident Project Representative	\$ 110.00
CAD Designer	\$ 85.00
Clerical	\$ 70.00
CAD Drafter	\$ 70.00
Survey Rodman **	\$ 40.00
Survey Laborer **	\$ 25.00

*** Service item includes all survey equipment, materials, vehicles, and associated appurtenances to perform all required survey work. Travel time to project site shall be included in hourly billing.*

Aerial Survey Drone (Daily Min.)

\$3,000 / DAY



PROJECT REIMBURSABLE EXPENSES

Project Application Fees = Cost
 Mileage = Current Federal Rate
 Shipping = Cost

Reproduction (Offsite) = Cost
 Travel / Lodging = Cost
 Sub-Consultant Fees = Cost + 10%

SRF Sewer Facilities Construction Phase Services Fee

Input Actual Construction Cost	Calculated Fee Percentage	Calculated Fee Dollar Amount
\$8,000,000.00	7.7000%	\$616,000.00

Input Construction Cost Above & Below Actual Construction Cost from the Table Below	Input Fee Percentange associated with Construction Cost from the Table Below
\$6,000,000.00	8.1000%
\$7,000,000.00	7.9000%

Construction Cost	Fee as a Percentage of Construction Cost	Construction Phase Services Fee Dollar Amount
\$10,000.00	23.0000%	\$2,300.00
\$100,000.00	23.0000%	\$23,000.00
\$200,000.00	19.5000%	\$39,000.00
\$300,000.00	17.5000%	\$52,500.00
\$400,000.00	16.0000%	\$64,000.00
\$500,000.00	14.8000%	\$74,000.00
\$600,000.00	14.0000%	\$84,000.00
\$700,000.00	13.3000%	\$93,100.00
\$800,000.00	12.7000%	\$101,600.00
\$900,000.00	12.1000%	\$108,900.00
\$1,000,000.00	11.7000%	\$117,000.00
\$1,250,000.00	10.8000%	\$135,000.00
\$1,500,000.00	10.1000%	\$151,500.00
\$1,750,000.00	9.7000%	\$169,750.00
\$2,000,000.00	9.5000%	\$190,000.00
\$2,500,000.00	9.1000%	\$227,500.00
\$3,000,000.00	8.9000%	\$267,000.00
\$3,500,000.00	8.8000%	\$308,000.00
\$4,000,000.00	8.6000%	\$344,000.00
\$5,000,000.00	8.3000%	\$415,000.00
\$6,000,000.00	8.1000%	\$486,000.00
\$7,000,000.00	7.9000%	\$553,000.00
\$8,000,000.00	7.8000%	\$624,000.00
\$9,000,000.00	7.7000%	\$693,000.00
\$10,000,000.00	7.6000%	\$760,000.00
\$20,000,000.00	6.6000%	\$1,320,000.00
\$40,000,000.00	6.6000%	\$2,640,000.00

SRF Sewer Facilities Construction Phase Services Fee

Input Actual Construction Cost	Calculated Fee Percentage	Calculated Fee Dollar Amount
\$8,000,000.00	7.7000%	\$616,000.00

Input Construction Cost

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\$20,000,000.00	6.6000%	\$1,320,000.00
\$40,000,000.00	6.6000%	\$2,640,000.00

ALLOWABLE COST CERTIFICATION

Loan Applicant: West Jackson County Utility District

Loan Number: SRF-C280

We, Gerrod Kilpatrick, P.E. (Designated Representative) of Machado|Patano, PLLC (Professional Services Firm) (hereinafter "Professional") and John Hannah, P.E. (Authorized Representative) of West Jackson County Utility District (Loan Applicant) (hereinafter "Loan Applicant"), understand that this Allowable Cost Certification (hereinafter "Certification") is a material representation of fact upon which reliance is placed by the Mississippi Department of Environmental Quality (hereinafter "MDEQ") regarding state financial assistance under Section 49-17-81 through 89, Mississippi Code of 1972, as amended (Water Pollution Control Revolving Fund and Emergency Loan Fund Act) to construct the water pollution control project identified above.

We understand that we shall immediately provide notice to MDEQ if at any time either party learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

We certify to the following provisions regarding contracts for professional services between the Loan Applicant and Professional for this project as well as any related subcontracts into which the Professional may enter:

Labor costs, other direct costs, overhead, profit and all other costs are reasonable considering the nature and scope of work, the degree of risk, and the type of contract.

The overhead rate does not include public liaison services, bad debt or entertainment costs.

This contract for professional services contains only costs that are normally charged by the Professional on other similar non-Water Pollution Control Revolving Loan Fund (WPCRLF) projects, and such costs have not been increased for this WPCRLF project.

We understand that MDEQ will report violations and/or suspected violations to the appropriate state authorities in accordance with applicable state law and regulations as determined appropriate by MDEQ.

We understand that if MDEQ discovers that any of the allowable cost requirements were violated or that the Professional and/or Loan Applicant rendered an erroneous Certification, in addition to all other remedies available, the Executive Director, or his designee, may determine that the related costs are unallowable and may require repayment of all WPCRLF funds paid for such costs, in accordance with Rule 7.3.H.(6) of the WPCRLF Program Regulations. We also understand that violations of the state public purchasing laws may subject us to further penalties as described in Sections 31-7-55, 31-7-57 and/or 97-7-10, Mississippi Code of 1972, as amended.

The Professional and Loan Applicant certify under penalty of law that they have personally examined and are familiar with the information submitted herein, and, based on inquiry of those individuals immediately responsible for obtaining the information, they believe the submitted information is true, accurate and complete.



Professional (Signature)

Gerrod W. Kilpatrick, P.E.

Printed Name

1-5-2023

Date



Authorized Representative (Signature)

John Hannah, P.E.

Printed Name

2-16-2023

Date

AGREEMENT

The Parties, the West Jackson County Utility District ("WJCUD") and the Jackson County Utility Authority ("JCUA") hereby agree to the following:

1. The WJCUD has requested it be allowed to install a 15" gravity sewer connection at Manhole No. 7, as shown and described in the attached drawing. The connection will be capped upon installation but can be utilized for future WJCUD use to deliver sewer through Manhole No. 7, at the connection, for further transport to JCUA Pump Station No. 6.
2. The JCUA has considered the request and agrees to allow WJCUD to make the 15" inch gravity sewer line connection at Manhole No. 7 at a mutually agreeable location and that the connection shall be warranted to be satisfactory, operable and free from defects for a one year period after final completion, by WJCUD, in accordance with JCUA Rules and Regulations.
3. The Parties agree the connection to Manhole No. 7 shall be made at the expense of WJCUD but in a manner agreeable to JCUA as to the location determined from the "as built" drawings and existing location and elevation of Manhole No. 7.
4. WJCUD hereby agrees and warrants it will be responsible for any defect in the installation and any damage that may be caused to the existing JCUA gravity sewer line during the connection process and for one year thereafter.

SO AGREED TO, by the Parties, this the 27th day of February, 2022.

JACKSON COUNTY UTILITY AUTHORITY

BY:


Tommy Eldridge, President
Board of Directors

WEST JACKSON COUNTY UTILITY
DISTRICT

BY:


_____, President

John T. Hannah

DIRECTOR