

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (hereinafter the "MOU") is entered into between the Mississippi Outdoor Stewardship Board of Trustees (hereinafter the "Board") and the City of Diamondhead (hereinafter "Entity") (collectively, the "parties") for the purpose of establishing the agreed upon conditions under which the Board may disburse funds to assist the Entity in paying costs associated with the local (project) Noma Drive Walking Path (hereinafter the "Project") specified in Miss. Code Ann. Section 49-39-7 (hereinafter the "Act"). The Project is described in the application provided to the Board October 2023 and is incorporated herein by reference. This MOU is entered into in accordance with Miss. Code Ann. Section 27-104-351, also known as the Line-Item Appropriation Transparency Act, and pursuant to, and subject to the terms of the Act, which authorizes an amount not to exceed **(\$500,000.00)** (hereinafter the "Project Funds"), for the Project. **(IT IS YOUR RESPONSIBILITY TO SPEND THE FUNDS RECEIVED FROM THE STATE IN ACCORDANCE WITH THE ACT AS WELL AS ALL STATE AND FEDERAL LAWS AND REGULATIONS.)**

RECITALS

WHEREAS, The Board is a state agency that acts as Mississippi Outdoor Stewardship Trust Fund with a principal place of business at 501 N. West St., Suite 1301, Jackson, MS 39201.

WHEREAS, the Entity is a state agency, or governmental entity with a principal place of business at 5000 Diamondhead Circle Diamondhead, MS 39525.

WHEREAS, Miss. Code Ann. Section 49-39-7, authorized expenditures from the Mississippi Outdoor Stewardship Trust Fund for certain projects.

WHEREAS, pursuant to Miss. Code Ann. Section 49-39-7, the Legislature has appropriated funds to the entity to pay the costs of the Project.

WHEREAS, the Act authorizes the Board to disburse monies in the Mississippi Outdoor Stewardship Trust Fund to pay the costs of the Project.

WHEREAS, the Board finds that it is in the best interest of the Board and the Entity that the funds on deposit in the Mississippi Outdoor Stewardship Trust Fund for the Entity should be disbursed to the Entity and that the Entity shall directly administer the expenditure of such funds for the Project.

NOW THEREFORE, IT IS MUTALLY AGREED BY THE BOARD AND ADMINISTRATION AND THE ENTITY AS FOLLOWS:

Section 1. The Entity agrees to maintain on file the documentation listed in "Exhibit A" attached hereto and incorporated herein by reference.

Section 2. The Entity agrees to abide by the Mississippi Outdoor Stewardship Program Manual and is incorporated herein by reference.

Section 3. the Entity shall obtain or require contractor to obtain a builder's risk insurance policy at the time any construction begins. The insurance must cover potential losses after initiation, but before completion, of the construction or modernization caused by theft, fire, vandalism, and other types of accidental loss or damage to the project. The Board may waive this requirement if the Entity shows that it is effectively self-insured against the risks involved. The term "effectively self-insured" shall mean that the recipient has sufficient funds to pay for any damage, including total replacement, if necessary, or to satisfy any claims against the project.

Section 4. The Board shall retain ten percent (10%) of each reimbursement request. Upon the completion of the project and all required documentation has been submitted and approved by the Board, the retainage amount shall be released to the Entity after a final audit is conducted.

Section 5. The Entity agrees that the Board shall reimburse the Entity once project expenses have been incurred and paid for by the Entity, proper itemized expenditure documentation has been submitted to the Board, and the Board has approved the requested reimbursement up to the amount in this agreement. Proper documentation includes all invoices, receipts and associated with the reported expenditures. Reimbursement requests shall be provided within thirty (30) days of each calendar end of the month.

Section 6. The Entity agrees expenses directly related to the project scope but incurred prior to this agreement are not reimbursable. Appraisals, project planning, and environmental compliance review expenses may be counted as match only if incurred within eighteen (18) months of this agreement.

Section 7. The Entity agrees that any incidental costs or items not directly associated and essential for the completion and execution of a project shall be ineligible for reimbursement or match. Entity should refer to federal regulations on cost principles to assist in determining allowable costs appropriate for the project.

Section 8. The Entity agrees that the value of donations and third-party contributions provided at no cost cannot be reimbursed and to be counted towards a project's match, the Entity shall provide an invoice and a letter from the organization acknowledging the donation and its fair market value.

Section 9. The Entity agrees that labor donations shall be valued at an hourly rate of pay to be calculated using the Mississippi Median Hourly Wage standards for the most

comparable occupation identified on the U.S. Bureau of Labor Statistics site, found at https://www.bls.gov/oes/current/oes_ms.htm, excluding taxes, benefits, and overtime.

Section 10. The Entity agrees to expend the funds within twenty-four (24) months from the date of this agreement.

Section 11. The Entity agrees that if any proceeds from the Project Funds are remaining at the completion of the Project, the Entity will immediately notify and consult with the Board regarding the disposition of the funds and said funds shall be directed in accordance with the Act.

Section 12. The Entity agrees that the Entity may request project term extensions if the project is expected to exceed the 24-month deadline. Extensions must be requested within a reasonable time before the expiration of the original 24-month deadline. At a minimum, extension requests must inform the Board of the current status of the project, current expenditures, anticipated completion date, and reason for the delay. The Board, at its discretion, may request any additional information necessary to make its determination. Extensions are limited to ninety (90) day increments and subject to approval by the Board. If approved, the Entity shall sign a Project Agreement Amendment. If disapproved, and this agreement cannot be fulfilled, the Board may deobligate in part or in whole the funds appropriated in this agreement.

Section 13. The Entity agrees to provide quarterly reports to the Board which provide an update on the status of the Project including future expenditure of the funds. The quarterly reports must be provided on a form designated by the Board and must include all invoices and bank statements associated with the reported expenditures. The quarterly reports shall be provided within thirty (30) days of each calendar quarter end. The Entity shall also provide to the Board a final report no more than thirty (30) days after final expenditure of funds, summarizing the expenditures and use of the Project Funds upon completion of the Project. All invoices that have not previously been submitted, shall be submitted upon completion of the Project.

Section 14. The Board, pursuant to the Act, shall disburse the Project Funds from the Mississippi Outdoor Stewardship Trust Fund upon written request of the Entity to reimburse the costs associated with the Project.

Section 15. The Entity certifies and agrees to make every effort to expend all funds received from the Mississippi Outdoor Stewardship Trust Fund within twenty-four (24) months from the date of this agreement and solely for the costs of the Project as set forth in the Act and upon the terms and provisions of this MOU. Failure of the Entity to adhere to any provision within this MOU may result in immediate action by the State to recover project funds.

Section 16. The Entity agrees to execute any procurements utilizing the funding in a commercially reasonable manner. Failure to adhere may cause the Board to withhold all sums for the Project and/or seek recovery of the same. Further, the Entity agrees to

maintain on file the documentation listed in "Exhibit A" attached hereto and incorporated herein.

Section 17. The Entity agrees to provide the Board quarterly notarized reports as set forth hereinabove, in a format prescribed by the Board. The quarterly reports shall be provided within thirty (30) days of each calendar quarter end. The Entity shall also provide the Board with a final report summarizing the expenditures and use of the Project Funds no more than thirty (30) days after final expenditure of the Project Funds.

Section 18. The Entity agrees to conduct an independent annual audit and provide the Board with each annual audit report during the term of this Agreement. The Entity agrees to obtain an audit in accordance with auditing standards applicable to financial audits contained in the Government Auditing Standards, issued by the Comptroller General of the United States.

Section 19. The Entity agrees to maintain copies of all invoices, bank statements, and similar documentation for each expenditure of all funds received from the Mississippi Outdoor Stewardship Trust Fund sufficient to satisfy and confirm, to Board satisfaction, that such funds have been expended solely for the costs of the project as authorized and provided by the Act.

Section 20. The Entity agrees that if any proceeds from the Project Fund are remaining at the completion of the Project, the Entity will immediately notify and consult with the Board regarding the disposition of the funds and said funds shall be directed in accordance with the Act.

Section 21. The Entity agrees that Project Funds shall be expended in accordance with all State and Federal laws and regulations, and that failure to do so may cause the Board to withhold funds for the Project or seek recovery of same.

Section 22. Any notice from one party to the other under this Agreement shall be in writing and may be either personally delivered, emailed, or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each party at the addresses which follow, or to such other addresses provided for in this Agreement, or as the Parties may hereinafter designate in writing. Any such notice shall be deemed to have been given as of the date transmitted.

(Entity)
City of Diamondhead
Attn: Jon McCraw
5000 Diamondhead Circle
Diamondhead, MS 39525
Phone: (228) 222-4626
jmccraw@diamondhead.ms.gov

Mississippi Outdoor Stewardship Trust Fund
Attention: Ricky Flynt, Executive Director
501 N. West St., Suite 1301
Jackson, MS 39201
Ph. (601) 359-2526
Ricky.Flynt@dfa.ms.gov

Section 23. This MOU may be amended or modified only by written agreement signed by both parties.

Section 24. The Board has authority to hear, oversee, and resolve any disputes that may arise in carrying out the duties of the parties under this MOU. The Parties agree to undertake a good faith attempt to resolve any such disputes before seeking Board resolution.

Section 25. If any term or provision of this MOU is prohibited by the laws of the State of Mississippi or declared void by a court of competent jurisdiction, the remainder of this MOU shall not be affected thereby and each term and provision of this MOU shall be valid and enforceable.

Section 26. Each party shall be responsible for all claims, demands, liabilities, suits, damages, costs, and expenses of every kind, including court costs and attorney's fees, arising out of this MOU and caused by the party's own principals, agents, employees, contractors, or subcontractors while performing under this MOU. Further, the parties do not assume liability for any actions or omissions of each other's agents, representatives, employees, contractors, subcontractors, or providers.

Section 27. The Entity's tort liability, as political subdivision of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated § 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Board's liability, as a political subdivision of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated § 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering the liability or of eliminating any defense available to the Entity, Board, or the State under statute.

Section 28. It is understood and agreed that this document constitutes the entire understanding of the parties with respect to the subject matter contained herein and supersedes and replaces all prior negotiations, understandings, and agreements, written or oral, between the parties relating to the subject matter.

Section 29. This MOU, including any exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Miss. Code Ann. § 25-61-1, *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this MOU may

be subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.*

Section 30. Neither Party shall have the right to assign this MOU to a third party without the prior written consent of the other Party. Any permitted assignee shall assume all obligations of its assignor under this MOU. No assignment shall relieve any party of responsibility for the performance of any obligations that have accrued prior to such assignment.

Section 31. The failure of either Party to insist upon the strict observation or performance of any provision of this MOU or to exercise any right or remedy shall not impair or waive any such right or remedy in the future. Every right and remedy given by this MOU to the Parties may be exercised from time to time as often as appropriate.

Section 32. The Board and the Entity each represent and warrant to the other that the person signing below has all requisite legal power and authority to execute this MOU on behalf of each party and each party shall thereby be bound.

Section 33. This MOU is effective on the date of the final signature to the MOU ("Effective Date of this MOU"). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purpose of this MOU.

Section 34. Entity agrees and understands that it shall not proceed with any action requiring reimbursement, excepting items exempt in the MOSTF Program Manual, until Entity has been issued a Notice to Proceed Letter.

IN WITNESS WHEREOF, the parties have affixed their signatures on the dates indicated below.

MISSISSIPPI OUTDOOR STEWARDSHIP BOARD OF TRUSTEES

By: _____
Van Ray, Chairman

Date: _____

(ENTITY NAME)

By: _____
Name, Title

Date: _____

EXHIBIT A

The Entity shall maintain on file for Board review, the following items in relation to the Project:

1. A copy of the Program of Work for the Project.
2. A copy of any and all construction documents including contracts.
3. A copy of all contractor pay requests and professional pay requests and approval of payment for said services.
4. All invoices.
5. A copy of annual audit reports.
6. All contracts.
7. Any and all other documentation which may be required to document, to the Board satisfaction, that the Project funds are expended solely for the costs of the Project as set forth in the Act and upon the terms and provisions of this MOU.