

**MEMORANDUM OF AGREEMENT  
BETWEEN  
PURCELL CO., INC.  
AND  
THE CITY OF DIAMONDHEAD, MISSISSIPPI**

This Memorandum of Agreement (this "Agreement") is executed by and between the City of Diamondhead, located in Hancock County, Mississippi (the "City"), a municipal corporation of the State of Mississippi, acting by and through its City Council and Purcell Co., Inc. ("landowner") effective as of the last date of execution hereof.

**WITNESS THE FOLLOWING:**

**WHEREAS**, the City has developed plans and specifications to build and construct a pedestrian pathway that will be located, in part adjacent to property north of Interstate 10 and south and southwest of the existing boat ramp owned by Landowner (the Project), which property is more particularly described as the yellow highlighted parcel attached hereto and made a part hereof as Exhibit "A"; and,

**WHEREAS**, the City has the resources to advertise, let, manage to completion the Project, along with providing construction engineering and inspection services for the Project, and intends to properly maintain and operate the Project; and,

**WHEREAS**, the Landowner acknowledges that a small area of the Project will encroach upon property of Landowner, but is willing to allow the encroachment by easement or other necessary instrument; and,

**WHEREAS**, the Landowner and the City desire to cooperate and coordinate activities in order to provide recreational and pedestrian facilities for the citizens of the City and the State; and

**WHEREAS**, it is understood by all parties that eligibility for certain funding may impose requirements in addition to those contained in this Agreement; and

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, the Landowner and the City do hereby agree as follows:

**I. PURPOSE**

The purpose of this Agreement is to establish and define the respective responsibilities and obligations of the Landowner and the City with respect to the Project.

**II. CONTACT PERSONS**

It is understood by all parties that the City executes all of its orders and directives through its City Council and City Manager.

Unless otherwise notified in writing to the contrary, the appropriate contact person for the Landowner for matters pertaining to this Memorandum of Agreement shall be:

Carl Joffe, Esq.  
Purcell Co., Inc.  
4401 E. Aloha Drive  
Diamondhead, Mississippi 39225  
Telephone 228-255-7773

Unless otherwise notified in writing to the contrary, the appropriate contact person for the City for matters pertaining to this Memorandum of Agreement shall be:

Jon McCraw, City Manager  
City of Diamondhead  
5000 Diamondhead Circle  
Diamondhead, Mississippi 39225  
Telephone: 228-222-4626

### III. ADMINISTRATION AND RESPONSIBILITIES OF THE PARTIES

It is understood and agreed that this Agreement is a Memorandum of Agreement, and that its provisions may be superseded by state and federal laws, regulations, rules, and policies.

- A. The Landowner hereby covenants, and agrees that it will:
1. Allow the City to construct the Project by easement or other necessary instrument, as agreed by the parties, on the areas that encroach upon property of the Landowner that is adjacent to the other area of the Project owned by the City as shown on the plans; and
  2. Provide a timely approval of the permit application submitted by the City for the part of the Project that encroaches upon the property of the Landowner.
- B. The City hereby covenants, warrants, and agrees that it will:
1. Submit promptly all required documents, plans or other items to Landowner for the permitting process or procurement of easement or other necessary instrument.
  2. Be responsible for all maintenance of the Project after the City's contractor is released from the construction contract.
  3. Ensure that the City's contractors have general liability insurance coverage that lists the Landowner as a covered party or loss payee on the policy, as well as property damage coverage, and workers compensation insurance coverage.

4. Prohibit the storage of any personal property upon the Landowner, including but not limited to hazardous materials, fuel, oil or contaminated material without express written permission for same signed by Landowner.
5. Take all necessary steps to ensure prompt completion of its Project pursuant to the plans and specifications, and promptly pay all costs associated with the construction of the Project.
6. Take all necessary steps to insure that Landowner, its successors, heirs, assigns or tenants, will not be precluded from gaining access to the waterway across the proposed improvements after completion of same.

#### **IV. AMENDMENTS**

This Agreement may be amended in writing as mutually agreed upon by the parties.

#### **V. SEVERABILITY**

Should any provision of this Agreement be found to be unconstitutional, or otherwise be contrary to the laws of the State of Mississippi or the United States of America, to the extent that it is reasonably possibly to do so, the remainder of this Agreement shall remain in full force and effect.

#### **VI. GENERAL PROVISIONS**

- A. This Agreement shall be subject to termination only by mutual agreement of the parties.
- B. It is understood that this is a Memorandum of Agreement, and that more specific requirements for the design and construction of the Project are contained in the Federal Statutes, the Code of Federal Regulations, the Mississippi Code, and other related regulatory authorities. The parties agree that each will abide by all such applicable authority.

#### **VII. RELATIONSHIP OF THE PARTIES**

- A. The City is a public agency, and in accordance with its status as an independent agency, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, or claim to be, an agent, officer, or employee of the Landowner by reason hereof.
- B. The Landowner will not be a party to any contract or subcontract entered into by the City, other than this Agreement.
- C. No provision of this Agreement is intended, nor shall it be construed, to grant any right, title, or interest to any person or entity not a signatory hereto.

**VIII. RESPONSIBILITIES FOR CLAIMS AND LIABILITY**

- A. The Landowner, and all of its agents, officials, and employees have no obligations or responsibilities toward the activities conducted under this Agreement except those specifically stated herein, and have no authority to select, employ, supervise, or control any contractor employed by the City, or any employee, agent, or official of the City, or any of the City's contractors or subcontractors.
- B. In the event that any act or omission on the part of the City or its contractors causes damage to the property of the Landowner, the City shall be solely responsible for all costs to repair or replace the damaged property.

SO EXECUTED AND AGREED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2023.

**CITY OF DIAMONDHEAD, MISSISSIPPI**

By: \_\_\_\_\_  
Jon McCraw, City Manager

SO EXECUTED AND AGREED THIS 16th DAY OF February, 2023.

**PURCELL CO., INC., Landowner**

By: Artis E. James, Jr.  
Artis E. James, Jr., President



